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OF THE  
SOCIETY OF COMPARATIVE  
LEGISLATION.

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AND  
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“ Δεί καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τὸ τ’ ὁρθῶς ἔχον ὁφθῇ καὶ τὸ  
χρήσιμον ”—ARIST *Pol.* II. I.

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# CONTENTS OF No. XXX.

	PAGES
1. COUNCIL AND EXECUTIVE COMMITTEE OF THE SOCIETY . . .	5-8
2. THE RIGHT HON. CHIEF JUSTICE GRIFFITH: PORTRAIT AND SKETCH . . . . .	9-10
3. ROMAN-DUTCH LAW IN BRITISH GUIANA . . . . . LECTURE BY PROF. R. W. LEE.	11-23
4. SPANISH LAW IN THE BRITISH EMPIRE . . . . . BY CHARLES E. REIS, ESQ.	24-33
5. THE NEW BANKRUPTCY ACT . . . . . BY W. N. STABLE, ESQ.	34-37
6. REVIEW OF LEGISLATION, 1912:	
INTRODUCTION . . . . .	42-44
FOREIGN . . . . .	45-65
BRITISH EMPIRE . . . . .	66-246
INDEX TO REVIEW . . . . .	247-275
7. REVIEWS:	
"THE GREAT JURISTS OF THE WORLD" . . . . .	276-279
"THE MAKING OF THE AUSTRALIAN COMMONWEALTH, 1889-1900", . . . . .	279-282

## 8. NOTES :

THE LITERATURE OF CRIMINAL LAW	.	.	.	.	.
MILITARY REQUISITIONS AND FOREIGNERS	.	.	.	.	.
TRANSPORT LAW	.	.	.	.	.
DOMESTIC RELATIONSHIP COURT	.	.	.	.	.
INSURANCE LAW IN AUSTRALIA	.	.	.	.	.
INDUSTRIAL ARBITRATION	.	.	.	.	.
SCOTTISH AND SOUTH AFRICAN LAW	.	.	.	.	.



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## THE RIGHT HON. CHIEF JUSTICE GRIFFITH.

THE portrait in this issue of the Journal is that of the Right Honourable Sir Samuel Walker Griffith, G.C.M.G., Chief Justice of the High Court of Australia.

Born in 1845, and educated at Sydney University, Sir Samuel Griffith was called to the Queensland Bar in 1867, and entered the Legislative Assembly five years later. In 1874 he attained ministerial rank as Attorney-General. In 1879 he became the Leader of the Opposition in the Assembly, and in November 1883 Prime Minister of the Colony while holding the offices of Colonial Secretary and Secretary for Public Instruction. In the capacity of Prime Minister he was a leader of the Federal Movement, and became a member for Queensland of the Federal Council of Australasia which was created by an Imperial Act in 1885. He was appointed Chairman of the Standing Committee of that Council in 1886. He was present, as the representative of Queensland, at the celebration of the Jubilee of the accession of Queen Victoria, and took part in the Colonial Conference of that year.

After the defeat of the Government at the General Election he resigned office in June 1888, and again led the Opposition in the Assembly. He became Prime Minister for the second time in August 1890, and continued in that office until March 1893. In 1891 he was Vice-President of the National Australian Convention, and Chairman of the Committee which it appointed to draft a Bill for the establishing of a Federal Constitution for Australia, and in this capacity he had an important share in the drafting of a measure which, though much modified subsequently, in large degree formed the basis of the present Commonwealth constitution.

In 1893 the political career of Sir Samuel Griffith was brought to a conclusion by his appointment to be Chief Justice of Queensland. His tenure of that office, which he held for ten years, proved that his great administrative abilities were not inconsistent with a judicial fairness of mind, which, coupled with his extensive knowledge of law and his wideness of outlook, soon established his reputation as the most distinguished member of the Judicial Bench in Australia. When, therefore, in 1903 the framework of the constitution of the Commonwealth was completed by the setting up of the High Court contemplated in the constitution, there was unanimous agreement in the Commonwealth that the post of Chief Justice could be conferred on one man only; and the appointment of Sir Samuel Griffith was

received on all sides with marked expressions of approval. Since that date the work required from the Chief Justice has steadily increased in volume and in importance. The High Court is a Court of Appeal from the Supreme Courts of the six Australian States in the exercise of their State as well as of their federal jurisdiction, and the amount of the business with which it is called upon to deal is only exceeded by the complexity of the issues which are presented to it. Moreover, the High Court of the Commonwealth is the only Court in a self-governing Dominion which is entrusted with the final decision of constitutional questions affecting the relations of the Central and the State governments and of the States *inter se*, though with a right to desire that the matter should be carried to the Judicial Committee of the Privy Council; and, from the first, problems of great difficulty have presented themselves for solution by the Court. Though the questions at issue are matters which, affecting as they do the relations of different governments and the policy of ministries, tend to raise strong political feeling, it has been acknowledged by common consent that the Chief Justice has shown in dealing with them an unrivalled knowledge of the principles affecting the law of federal governments and the greatest ability in applying to the special problems of Australia those principles which have been developed in the working of the federal constitution of the United States—the model which influenced most the statesmen who framed the constitution of the Commonwealth of Australia.

Sir Samuel Griffith was appointed to the Privy Council in 1901, in recognition of his services to the cause of federation; and by this appointment he became under the Imperial Act of 1895 a member of the Judicial Committee of the Privy Council. In this capacity he sat in the Judicial Committee for the first time last year, and took part in the hearing of many and varied cases. It may be added that he has always shown great interest in the work of the Society, and has promised to be Chairman of the Society's Branch in Australia.

## ROMAN-DUTCH LAW IN BRITISH GUIANA.<sup>1</sup>

[Contributed by PROF. R. W. LEE.]

**The Dutch Settlements.**—The Colony now known as British Guiana incorporates within its boundaries the three Dutch settlements of Essequibo, Berbice, and Demerara. It inherits their history and derives from them its law. I shall endeavour to show what changes the law has undergone since the date of British occupation, and what is its character at the present day. We shall see it on its defence against the encroaching influence of English law, in some departments vanquished at once and without a struggle, in others holding its ground for more than a century only to yield at last to the invader, in others (but they are few) firmly established in the inherent strength of its principles, and ready to do battle against all comers. With the political history of the Colony I have no concern except so far as some brief reference to it may properly serve as an introduction to what is to follow.

The settlements of the Dutch on the Wild Coast (for so it was called) of South America date from the early years of the seventeenth century. A fort was established on the Essequibo River about 1613.<sup>2</sup> Berbice was settled some ten years later;<sup>3</sup> Demerara not until the middle of the following century.<sup>4</sup> The functions of direction and control were exercised by the Dutch West India Company acting principally through its Committee known as the Assembly of Ten. Locally, there was one government for the United Colony of Essequibo and Demerara, another for Berbice. In the last years of the eighteenth century an instrument called the Plan of Redress was accepted as defining the constitution of the first-named Colony. It constituted for the two settlements a Director-General and a single Court of Policy, but each retained its separate judiciary. Berbice had its own Governor, Court of Policy, and Court of Justice.

In 1796 the three settlements surrendered to the British. They were restored to Holland by the Treaty of Amiens in 1802, and recaptured in 1803. The definitive cession to Great Britain was effected by the Treaty of London of 1814, which at the same time confirmed the British title to the Cape of

<sup>1</sup> A lecture delivered at University College, London, on October 9, 1913, Sir Crossley Rayner, Kt., Chief Justice of the Colony, presiding.

<sup>2</sup> James Rodway, *Guiana, British, Dutch, and French* (London, 1912), p. 47.

<sup>3</sup> Rodway, *History of British Guiana*, vol. i. p. 6 says in 1627.

<sup>4</sup> In 1745; *op. cit.* vol. i. p. 118.

Good Hope. The Articles of Capitulation of Essequibo and Demerara dated September 18, 1803, provide for the retention of existing laws and usages.

By letters patent of March 4, 1831, the Colony of British Guiana was constituted out of the pre-existing Colonies of Essequibo-Demerara and of Berbice. The letters patent provide that "nothing herein contained shall extend, revoke, or abrogate any law or lawful usage now in force in the said United Colony of Demerara and Essequibo or in the said Colony of Berbice respectively."

**The Dutch Law in Force.**—Here we may leave the story of constitutional development, and proceed to inquire what the law was which the Articles of Capitulation expressly continued in force.

We find it specified in an extract from the Register of the Resolutions of their High Mightinesses the States-General of the United Netherlands bearing date October 4, 1774, printed in the first volume of *The Laws of British Guiana*. It runs as follows:

"It shall be further enacted, as it is by these presents enacted accordingly, that all the laws of Holland in general and more particularly all Laws, Statutes, Resolutions, and Ordinances of their High Mightinesses or of the Committee of Ten heretofore transmitted to the Director-General and to the Court of Essequibo or to the Commander and Court of Demerara shall be the rule of their judgments." In Matrimonial Matters they are to be governed by the Political Ordinance of 1580, in respect of Intestate Succession by the law of North Holland. In Civil cases they are to be regulated by the manner of proceeding enacted by the Assembly of Ten, and in everything not especially provided for they shall have recourse to the written law.<sup>1</sup>

The above resolution, it will be noticed, applies only to Demerara-Essequibo. In Berbice the law was substantially the same—with one exception, namely, intestate succession, which in that settlement is governed by the law of South Holland,<sup>2</sup> as modified by the Charter granted to the East India Company dated January 10, 1661.

**Criminal Procedure.**—The beginnings of British administration were marked by grave disorder. In 1821 a public meeting was held to discuss the subject of judicial abuses, and a petition was addressed to the King praying His Majesty to take into consideration "the deplorable state of the administration of justice."<sup>3</sup> In 1824 a Commission was appointed by the Crown to inquire into the administration of criminal and civil justice in the West Indian and South American Colonies. Two of the three Com-

<sup>1</sup> *I.e.* to the Statute Law of Holland, and that failing, to the laws of Rome.

<sup>2</sup> This provision is contained in Art. 30 of the Charter of Berbice of December 6, 1732. Van der Vorm, *Versterfrecht*, ed. Blondeel, p. 637.

<sup>3</sup> *The Demerara and Essequibo Vade Mecum* for 1825, p. 15.



missioners died in office. The Report of the Commission—so far as relates to the Colonies of British Guiana—dated April 14, 1828, is signed by the surviving Commissioner, Mr. Jabez Henry, who is known as the translator of Van der Linden's *Institutes of the Laws of Holland*. The recommendations of the Commissioner are mainly directed to the practice and procedure of the Criminal Courts. With regard to the Civil Law he reports that "the examiners in both Colonies concurred in stating that the Civil Law in force there, as contra-distinguished from the Criminal Law, is simple and well adapted to the wants and usages of the people."<sup>1</sup> From what I hear, this proposition would not meet with universal acceptance at the present day.

The more urgent recommendations of the Commission were given effect by an Order-in-Council of December 15, 1828, relating to the Criminal Courts. Witnesses were to be examined *viva voce* and not in writing, and the President and members of the Court of Civil and Criminal Justice were "with all convenient speed to make rules for the improvement of the forms of pleading and proceeding upon criminal trials."<sup>2</sup> In pursuance of this order, Rules for Procedure in Criminal Trials were issued on May 12 of the following year.<sup>3</sup> That such a step had been too long delayed is apparent, if we remember that up to this time the Manner of Proceeding in Criminal Matters of Philip II., dated July 9, 1570, was still in force in these Colonies,<sup>4</sup> an enactment which was in no way in advance of the prevailing sentiments of its time. Amongst other things it permitted torture as a means of proof, "but only when the thing is so clear and the proof so apparent that nothing seems to be wanting but the confession of the prisoner to convict him without doubt" (Art. 42).<sup>5</sup> Another provision which offends against modern taste is the following: Art. 49. "The bodies of malefactors shall remain on the place of execution and not be permitted to be buried except by the permission of the Chief Justice of the Province, which permission shall not be granted except in the case of persons of rank and where the crime is not of a heinous nature." One more indication of the primitive condition of the Criminal Law of the time is afforded by a Publication of the Lieutenant-Governor of Berbice of the year 1826, which enacts "that the Court of Criminal Justice need not attend when its sentences are carried into effect."<sup>6</sup>

**Civil Procedure.**—I will not trouble you with an account of the successive steps by which the Rules of Civil Procedure were reformed in the early

<sup>1</sup> *Second Report of Commissioners on Criminal and Civil Justice in the West Indies and South America*, p. 3.

<sup>2</sup> *Local Guide of British Guiana for 1843*, p. 43.

<sup>3</sup> *Ibid.* pp. 45, 51.

<sup>4</sup> A translation is to be found in Appendix I. to the *Second Report of the Commissioners* at p. 241, and also in the *British Guiana Vade Mecum for 1825*, p. 58.

<sup>5</sup> The practice of torture, however, had been forbidden by Order-in-Council some years previously.

<sup>6</sup> *The Laws of British Guiana* (ed 1870), vol. i p. 68.

thirties. The general result was an approximation to the English type of procedure, but not so as to exclude some typically Dutch institutions such as "edictal citation" and "arrest to found jurisdiction"—which remained for some time longer, as they still remain in South Africa, to remind the local practitioner that he derives some part at least of his law not from Westminster but from the Hague.

Let us now pass to the examination of the substantive law and see how much of this remains Roman or Dutch at the present day, how much is now English in letter or in spirit.

**Age of Majority.**—The earliest alteration of the law which has come to my notice is Ordinance No. 1 of 1832,\* fixing the age of majority for both sexes at twenty-one instead of twenty-five. Similar enactments were passed in Cape Colony in 1829, in Ceylon in 1865, in the Transvaal in 1853, and in the Orange Free State after the war.

**Marriage.**—The law of marriage was the subject of legislation in 1834-5. Previously it had depended upon the Common Law and principally upon the Political Ordinance of 1580. This last-named enactment of the States of Holland and West Friesland, though in effect superseded by the Marriage Order-in-Council of 1838, remained formally in force until abrogated by the Marriage Ordinance, No. 25 of 1901.

**Succession.**—The next important change in the law is in the field of Succession. It will be remembered that the Roman Law from earliest times treated the heir as the universal successor of the deceased; that is to say, if the heir took up the inheritance (which, however, he was not bound to do) he stepped into the legal shoes, as it were, of his testator, and became personally answerable for all claims upon the estate, without any regard to the amount of the testator's assets. Justinian made things easier for the heir. He was offered the alternative of either entering at once upon the inheritance and making an inventory (in which case he incurred no liability beyond the amount of the assets), or on the other hand of applying for a period of deliberation to enable him to consider whether he would accept or decline the succession. If, after deliberation, he accepted, he incurred the unlimited liability of the older law.

**Liability of the Heir.**—In the Dutch Law the heir was treated with less consideration than under Justinian's legislation. The benefit of inventory, which Justinian allowed as of course to any one who applied for it, in Holland was only occasionally granted upon application to the Court. The other alternative remained, viz. to claim the period of deliberation. From Ordinance No. 8 of 1838 it appears that this was the common practice in the Colony; and that twelve months had been usually allowed for deliberation. The Ordinance refers to the inconvenience of the practice and limits the right of deliberation to a period of six months. This enactment, you will see, made little alteration in the law. What is truly astonishing is that it made so little. It leaves the heir, as he was before, the universal successor of the

deceased; liable without limit to the burden of his debts. In South Africa<sup>1</sup> and Ceylon the heir has long since been replaced by the executor or administrator of the English type. In British Guiana alone he continued until so recently as 1909 to fulfil the rôle which the old Roman Law assigned him of universal successor.

**Wills.**—From the liability of the heir I pass to the formal requirements of a man's last will and testament. In the Roman Law, generally speaking, a testator must declare his will in writing or by word of mouth in the presence of seven competent male witnesses. But if he made his will in the country, five witnesses were sufficient. If he made it in time of pestilence the Law required the full number of witnesses, but they need not be present at the same time. Sometimes no witnesses were required; for example, a father might dispose of his property amongst his children by an unwitnessed writing under his hand. This is still law in Cape Colony. But the soldier on active service was most highly privileged. He might make his will in any way he could, e.g. by verbal declaration before any casual witnesses or, as—in a case put by the Emperor Constantine—by writing it with his blood inside his shield or by tracing its characters with his sword in the dust.<sup>2</sup>

To these various modes of testamentification the Dutch Law added the Notarial Will executed before a notary and two witnesses. In British Guiana the English type of will non-notarially executed before two witnesses, was made optional by Ordinance No. 20 of 1839; and now by an Ordinance of 1906 no will made in the Colony is valid unless it conforms to this model, and the notarial will is expressly abolished.

**Orphan Chamber.**—A very important and useful institution of the old Dutch Law was the Orphan Chamber. This was an official board charged with the supervision of orphan children, that is, of children who had lost one or both parents. The useful activities of these bodies left little room for the fraudulent trustee. To accomplish this beneficent result it was necessary for them, and they were usually authorised by local statutes, to call for accounts from all persons who found themselves in the position of guardian of infant children. This salutary function has been maintained in South Africa, for though the official Orphan Board was abolished in 1833 its work has been carried on and continued by the Master of the Supreme Court. In British Guiana the Orphan Chamber seems (to judge from the answers given to the Commissioners in 1828) to have concerned itself very little with orphans.<sup>3</sup> Perhaps this is one reason why it was abolished by an Ordinance of 1844. Since that date there have been Administrators-General and Public Trustees; but it has never (so far as I can learn) been any one's business to keep a testamentary guardian up to the mark. The opinion I express is not my own

<sup>1</sup> For South Africa, see *Fischer v. Liquidators of the Union Bank*, (1890) 8 S.C. 46.

<sup>2</sup> *Cod.* 8. 21. 15. 1.

<sup>3</sup> Answers 280, *et seq.*, *Second Report of Commissioners*, at p. 138

but that of a gentleman who is intimately acquainted with the legal practice of the Colony.

**Criminal Law.**—The Roman-Dutch Law of Crimes, like the law of criminal procedure to which reference has been made above, was little suited to the principles of English government. It remained none the less the Criminal Code of the Colony until the year 1846, when the law of England was introduced in a series of ordinances, due to the laborious industry of the then Attorney-General, Mr. William Arrindell. In a letter to the Governor, Mr. Henry Light, printed in the 1870 edition of the Colonial Statutes, he observes that “up to the present time the Colony has continued to be governed by Criminal Laws to be found only in the Latin and Dutch languages and, strange to say, the inhabitants have been contented with a system of Criminal Law and practice to be found only in languages entirely foreign to them.” “I consider it,” he continues, “an immense advantage to have the laws, by which men’s actions towards each other are governed, restrained, and regulated, in a language known to them; and although many, upon whom the amended laws will be obligatory, can neither read nor write, nor will ever be able to do either, yet in the course of a few years we may hope that the rising generation will be sufficiently educated to enable them to impart the meaning of these laws to their parents and others incapable of reading for themselves.”

For more than half a century, then, the Criminal Law of the Colony has been in effect identical, or nearly identical, with the Criminal Law of England; and by the Indictable Offences Ordinance, No. 18 of 1893, now in force, in the absence of contrary provision “all the rules and principles of the Common Law of England relating to indictable offences and other criminal matters shall so far as the same are applicable to the circumstances of the Colony be in force in the Colony.”

**Repeals of Common Law.**—If we may judge from the sparsity of legislative alterations of the Common Law during a great part of the last century, we must infer that the Colony was either satisfied with, or indifferent to, the character and sources of its law. We have travelled as far as 1846. I find no further important alteration of the old law until 1863, in which year “arrests to found jurisdiction” were abolished.<sup>1</sup> These curiosities of Dutch procedure were early superseded in Ceylon. In South Africa they continue to exist, but only as condemned murderers expectant of a speedy demise. The year 1864 saw the enactment of a measure of more general importance<sup>2</sup> whereby all questions arising within the Colony relating to ships and shipping, stoppage *in transitu*, freight, demurrage, insurance and the like are to be determined according to the law of England for the time being in force. Here, as once before, one is struck by the rather timid nature of the legislation. The Ordinance relates to marine but not to life insurance, and

<sup>1</sup> Ord. No. 13 of 1863, *Local Guide for 1864*. p. 915.

<sup>2</sup> Ord. No. 6 of 1864.

the primeval Dutch law on this topic remained to embarrass the Court so lately as 1908. It was only by Ordinance No. 3 of 1909 that the law of England for the time being was made the law of the Colony in relation to fire and life assurance as well. In Ceylon the English Law of Shipping was introduced in 1852, and the English Law of Life and Fire Insurance in 1866. In Cape Colony both topics are included within the scope of the General Law Amendment Act, No. 8 of 1879.

From 1868 (in which year the English Law of Treason-Felony was introduced by Ordinance No. 6) until 1887, there seems to have been absolutely no designed repeal of the Common Law. But with the 'nineties a new era set in. In recent years the legislature has been persistently active, and the Common Law has been torn up from the roots. First of the reforming statutes of this period is the Inheritance Ordinance (No. 9) of 1887. This enacts that wills are not to be impeached as inofficious (s. 4).<sup>1</sup> But it leaves unaffected the right of the children to claim their legitimate portion of the inheritance. The net result is very small. The children may still impeach the will so far as it encroaches on their legitime; it is not at all certain that they could have done more before the Ordinance came into operation.<sup>2</sup>

**Incorporation of English Law.**—To resume our historical progress. An Ordinance of 1891 codifies the law relating to Bills of Exchange, of course on English lines. Ordinance No. 20 of 1893 codifies the Law of Evidence, and by a general clause brings into operation the rules and principles of English law (s. 5).<sup>3</sup> In 1898 there is a Companies Ordinance, again on English lines. Act No. 25 of 1901, referred to above, consolidates the Law of Marriage and supersedes the Marriage Order-in-Council of 1838. Ordinance No. 12 of 1904 effects changes of far-reaching importance. By s. 6 community of goods between the spouses is no longer to be a consequence of marriage. This institution, which (as Mr. Nunan has justly remarked) is of Teutonic not Roman origin, was abolished in Ceylon by the Inheritance Act of 1876. In South Africa it remains in force unless expressly excluded. S. 25 of the same Ordinance abolishes the *Senatus-Consultum Velleianum* and the *Authentica siqua mulier*, by which women were disabled from binding themselves as sureties. In Ceylon this law was rediscovered as a curiosity in 1816<sup>4</sup> and has ever since been recognised as binding.<sup>5</sup> In South Africa it has never been called in question, but by legislation has been made inapplicable to negotiable instruments. S. 26 enacts in effect

<sup>1</sup> This clause is re-enacted in s. 4 of Ordinance No. 9 of 1909 (the Deceased Persons' Estates Ordinance), which repealed the Inheritance Ordinance of 1887.

<sup>2</sup> See *In re Evans*, November 12, 1903, a decision of the Full Court. The judgment, referring to s. 4 of the Inheritance Act, says: "The section is apparently principally declaratory of pre-existing law."

<sup>3</sup> The English Law of Evidence had, in substance, been introduced by Ordinances of 1829 and 1834.

<sup>4</sup> Ramanathan, 1820-33, p. 6.

<sup>5</sup> Pereira, *Laws of Ceylon*, vol. ii. pp. 624-5.

that a widower or widow may remarry without having previously settled accounts with the children of the first marriage. This follows logically upon the abolition of community of goods between the spouses, and abrogates another fundamental rule of the ancient law.

Ordinance No. 12 of 1906 works further changes. Notarial wills are abolished (s. 3). Another clause concerns second marriages, against which the later Roman Law displayed a remarkable hostility. A constitution of Leo and Anthemius, known from its opening words as the *Lex hac edictali*, provided that a surviving spouse could not give by deed *inter vivos* or bequeath by testament to his or her second spouse more than the amount of the smallest portion given or bequeathed to any child of the first marriage. This enactment was "received" into the law of Holland. It is abolished for British Guiana by the Ordinance last referred to, and the right of the heir and fiduciary to deduct one-fourth as against legatees and fidei-commissaries conferred by the Falcidian Law and the Trebellian *Senatus-Consultum* shares the same fate. But the legitim still remains untouched (s. 11). By the same Ordinance women may be appointed guardians, and non-relatives may refuse the guardianship (s. 16).

All this is extraordinarily belated legislation. In Ceylon the Trebellian and Falcidian portions do not seem to have been recognised as in force since Ordinance No. 21 of 1844. In all the South African Colonies they have been abolished by statute. The same fates have attended the legitim in Ceylon and in South Africa. British Guiana, therefore, is the only one of the Roman-Dutch Colonies in which this institution still obtains. In all the others the father need not leave his son even the proverbial shilling. In Guiana he must leave his children collectively one-third of his estate if they are four or less in number—if they exceed that number he must leave them one-half. The provision also that non-relatives may refuse the guardianship is certainly remarkable, for in Cape Colony it has been the law since 1833 that guardianship is a purely voluntary office, which no one can be compelled to undertake against his will.<sup>1</sup>

May I interrupt the course of the narrative for a moment to point out to you how strangely these recent repeals recall the complex nature and high antiquity of the system of law which they have done so much to destroy? Community of goods between the spouses, abolished in 1904, was an ancient institution of the Frankish tribes. The rule as to female sureties, abrogated by the same Act, depended upon a measure passed by the Roman Senate in the reign of the Emperor Claudius in the year 46. The *Lex hac edictali*, annulled in 1906, was originally enacted in A.D. 472. The *Lex Falcidia*, abolished by the same colonial Ordinance, was passed in the bloodstained year which succeeded the murder of Julius Cæsar. The *Senatus-Consultum Trebellianum*, which shared its fate, dates from the reign of the Emperor Nero.

<sup>1</sup> Maasdrorp, *Institutes of Cape Law*, vol. i. p. 244; Ord. 105 of 1833, s. 3.

I will mention one more act of the colonial Legislature which carries the work of destruction, or (if you will have it so) of reconstruction, a step further. This is Ordinance No. 9 of 1909. S. 3 creates a statutory succession of husband and wife to each other to one-half of the inheritance in the event of intestacy, and in default of issue. But (as I have pointed out in an article written for the *Journal of Comparative Legislation*<sup>1</sup>) this probably does not affect the Common Law succession of the surviving spouse in Demerara and Essequibo (but not in Berbice) to the whole of the inheritance on failure of all blood-relations of the deceased spouse.

**Judge-made Law.**—No picture of a legal system would be complete without some reference to its judge-made law. In the case of British Guiana, the information derived from this source, it must be confessed, is neither ample nor accessible. In the early days of the Colony judges gave judgments but not reasons. In the *Second Report of the Commissioners* of 1828 I find the following question addressed to the President and the Fiscal of Demerara :

“Is the Superior Court in this Colony bound to state the reasons of its judgments in any and what cases?”

*Answer by the President* : “The Court never in its proceedings states the reasons of its decisions.”

*Answer by the Fiscal* : “I am sorry to say they do not. I have always lamented the inability of discovering on what ground the decision rested.”

How long this practice lasted I cannot say ; but it was not until the year 1856 that the preservation of the records of written reasons of judgments began to be the practice. In marked contrast with Ceylon, which has been singularly prolific in Law Reports, projected and maintained by private enterprise, the Colony of British Guiana has very little to show in the way of law reporting. The series commenced in 1890 seems to have lasted no longer than 1893, and the three volumes of this issue, together with two volumes of reprints of decisions of the years 1856 to 1865, and one or two odd volumes besides, constitute, so far as I know, the whole of the published Reports of the Colony. Shall we say, as Tacitus says when he records the fact, or supposed fact, that there are no mines of the precious metals in Germany, “Gold and silver the gods have denied them—perhaps in anger, perhaps in mercy”? In recent years, however, it has been the practice to print all the judgments of the Supreme Court in the *Official Gazette*, where they are accessible, but not easily accessible, to students.

In these circumstances the decisions of the Judicial Committee of the Privy Council in appeal from British Guiana seem indicated as the line of least resistance. They are to be found in the three volumes of Knapp's Reports, in Moore, in Moore New Series, and in the Privy Council Appeals

<sup>1</sup> The Intestate Succession of Husband and Wife in Roman-Dutch Law, *Journ. Comp. Leg.* vol. xii. (N.S.), p. 310.

and the Appeal Cases of the Law Reports. In the thirties, forties, and fifties of the last century appeals from the Colony were fairly numerous, but the reported cases of the last forty or fifty years can be almost numbered on the fingers of one hand. Many of the older decisions turn on points of practice which are now obsolete, and therefore of merely historical interest. Some of them relate to matters of high constitutional importance. I will mention *Cameron v. Kyte*,<sup>1</sup> which defines the scope of a colonial Governor's authority, and *McDermott v. The Judges of British Guiana*,<sup>2</sup> which raises the question of the power to commit for contempt of Court. The case of *Allen & Carberry v. Kemble*<sup>3</sup> is cited as a leading case on the Conflict of Laws; that of *Steele v. Thompson*<sup>4</sup> lays down the rule that a servitude, being immovable property, can only be created by a formal conveyance executed in the presence of the judicial authority of the place where the property is situate. In *Farnum v. Administrator-General of British Guiana*<sup>5</sup> the Judicial Committee endorsed a somewhat archaic conception of the office of a testamentary executor as laid down by Van der Keessel at the end of the eighteenth century. To tell the truth, the list is neither long nor very instructive. The great mass of the law of the Colony is unilluminated by the decisions of the ultimate Court of Appeal.

Amongst the recent decisions of the Supreme Court of the Colony which have come to my notice I may mention a judgment of the learned Chief Justice, who has done us the honour of being present to-day, to the effect that adultery not being a crime in the modern law, a testamentary gift by one of the guilty parties to the other must be upheld as valid. It was a peculiarly hard case. The spouses were married in community. On the death of the wife (who was living apart from her husband, but not divorced), one moiety of the joint estate went by law to the wife's heirs. It was held that the adulterer became entitled to it under the terms of a general devise in the guilty wife's will. In giving judgment the Chief Justice<sup>6</sup> said: "I have come to this conclusion with great reluctance: the plaintiff first took away the defendant's wife, and now deprives him of half his property. This is one result of the application of a system of law, admirable in itself and well adapted to the people and state of society for which it was devised, to people and a condition of society quite different. Three hundred years ago the law I have been discussing was admirably adapted to society as it then existed, when the wife was entirely under the husband's control, and was legally in the position of a child; but it is obviously ill-adapted to the twentieth century."<sup>7</sup>

**Doctrine of Consideration.**—Some of you may have heard of the protracted controversy whether a contract unsupported by valuable considera-

<sup>1</sup> 3 Knapp 332.

<sup>2</sup> L.R. 2 P.C. 341.

<sup>3</sup> 6 Moore P.C. 314.

<sup>4</sup> 13 Moore P.C. 280.

<sup>5</sup> 14 App. Ca. 651.

<sup>6</sup> Sir Crossley Rayner.

<sup>7</sup> *Bert Chunkoo v. Beechun*, General Jurisdiction, December 2, 1912.



tion can be enforced according to the law of South Africa. Those who hold (and rightly, as I think) that the doctrine of consideration is wholly foreign to the Dutch Law have sometimes cited in support of their contention the decision of the Supreme Court of British Guiana in *De Cairos Brothers v. Gaspar*.<sup>1</sup> I may say that I have referred to the judgment in this case, and find that it decides nothing of the kind. On the contrary, in an earlier decision of the Supreme Court it is laid down by Beete and Alexander JJ. that valuable consideration is an essential element in every contract.<sup>2</sup>

**Land Transfer.**—A few words may be devoted to the subject of land transfer. From ancient times it was the custom in certain parts of Holland to convey land in the presence of the Court of the district in which the land was situate. The transport was said to take place *coram lege loci*. An edict of Charles V. of 1529 made the practice general and obligatory. From Holland it passed into the Dutch Colonies; and in British Guiana the conveyance of land is still a judicial Act, which the law of the Colony requires to be passed before one of their Honours the Judges of the Supreme Court of British Guiana. In South Africa the deed is now executed in the presence, not of the judge, but of the Registrar of Deeds. The same formality, as we have seen, is necessary to constitute or transfer a servitude. A feature peculiar to British Guiana is the practice of advertising an intended transport in three successive Saturday numbers of the *Gazette*,<sup>3</sup> and once, at least, in some unofficial newspaper. The object is to afford all persons interested an opportunity of entering a caveat against a transfer which they may judge to be prejudicial to their interest. It seems that even a lessee who fails to lodge his protest cannot make good a real right to the property transferred.<sup>4</sup> Here, again, I seem to detect a very primitive note in the law of the Colony. In Cape Colony an unregistered lease for less than ten years is absolutely secure against an alienee of the freehold with or without notice of the lessee's claim.

**Conclusions.**—I will now sum up the results of this enquiry and state my conclusions.

The procedure of the Colony, civil and criminal, is English in its general character, and also in its detailed application.

The Criminal Law is essentially English.

The substantive Civil Law may be conveniently referred to various branches, viz. the Law of Persons, of Things, of Obligations, of Succession.

The most characteristic institute of the Dutch Law of Persons is the

<sup>1</sup> *Official Gazette*, 1904, vol. xix. p. 1274.

<sup>2</sup> *Perot v. Chapman* (1863), Law Reports of B.G. vol. ii. O.S. p. 114.

<sup>3</sup> This is a practice of British not of Dutch origin, and was first prescribed by an order of the Court of Justice of May 7, published on May 16, 1807. See "Records of British Guiana," by Mr. N. Darnell Davies, C.M.G., in *Timehri*, vol. ii. N.S. p. 339.

<sup>4</sup> *Huree v. Bascom* (1860), Law Reports of B.G. vol. ii. O.S. p. 37.

so-called statutory community of goods between the spouses. In British Guiana this exists no longer. The Law of Guardian and Ward still depends upon the Roman-Dutch Common Law, but it is a topic which has not received much attention either from the Legislature or the Courts. With regard to the contracts of minors, certainly, there is considerable difference between the English and the Roman-Dutch Law. But the rules of the Roman-Dutch Law on this topic are scattered up and down in the books, and are not free from ambiguity. It will not be surprising, therefore, that in this, as in so many other departments of the Colonial Law, the Court has been inclined to look rather to English precedents than to the texts of Grotius and of Voet.

Turning next to the Law of Things, we note at once the absence of the English classification of property as real and personal. Things are classified according to their nature, as movable and immovable, and as corporeal and incorporeal. In this respect, at least, the superiority of the Roman-Dutch system is outside controversy. The Law of Servitudes, the Law of Mortgages, and the Law of Possession, in theory at all events, maintain their Civil Law complexion.

In the field of Obligations I understand that the Law of Delict is very largely, the Law of Contract largely, English. As regards Contract this is no matter for regret. The Roman Law of Contract seen through Dutch spectacles is ill-suited to the requirements of the present day. As an illustration, I may mention the Law of Agency, which is much more elastic in the English than in the Roman system. In the case of Delicts, if the matter were *res integra*, one might perhaps venture on a contrary opinion. But judgment has gone by default. The English Law of Torts, with all its strange intricacies and absence of uniformity, has prevailed over the simpler, and therefore superior, canons of the Roman Law.

It remains to mention the Law of Succession. As we have seen, the form of will is solely English. The heir is no longer the universal successor of the deceased. The field of testamentary succession has been invaded by English Law. Intestate succession remains stubbornly Dutch. The Law of North Holland obtains in Demerara and Essequibo; the Law of South Holland, as modified by the Octrooi of 1661, in Berbice. The matter seems to be one which may fairly claim the attention of the legislature.

The question has been mooted and discussed in the Colony whether, so much of the Roman-Dutch Law being gone, it is worth while to retain what is left. It has been proposed to make an end of it by the apparently simple and certainly tempting expedient of superseding it *in toto* by the rules of the Common Law of England.<sup>1</sup> A commis-

<sup>1</sup> It is believed that there is no precedent for such a sweeping change. The Trinidad Ordinance No. 4 of 1848 (s. 3) does not go so far. See *Journ. Comp. Leg.* vol. ii. O.S. No. 2, p. 292, and *infra*, p. 31.

sion, appointed by the Governor, has been considering the subject. It has concluded its sessions, but not yet submitted its report. The question is one on which I do not feel competent to express an opinion. The decision must rest with those who are intimately conversant with local conditions, and whose function it is to make and administer the laws of the Colony.

## SPANISH LAW IN THE BRITISH EMPIRE.

[Contributed by CHARLES E. REIS, ESQ.]

**Spain's Colonial Development.**—One of the first acts of Columbus upon his discovery in 1494 of the island of Hispaniola—which became the centre of government for Spanish America—was to nominate a governor and a council during his search for more gold elsewhere.<sup>1</sup> A regular succession of governors was sent to the island, and each of them received his instructions direct from the sovereign.<sup>2</sup> These instructions were the first regulations, for they can hardly be termed laws, framed for the colonies. As time went on appeals were made to the king for protection from the harshness and irregularities of these governors and governments. So early as 1495 a Royal Commission was sent out by Ferdinand and Isabella to the colony of Isabella (in Hispaniola) to investigate these various complaints.<sup>3</sup> Laws were made in Spain to enforce the redress granted; and as more appeals came, more laws were made. The year 1512 saw the promulgation of the first extensive laws for the Indies, the "Laws of Burgos," so called because they were drawn up in that city. From that date the making and transporting of laws to the Indies continued, according to the extent to which order prevailed in the colonies and the rapidity of their commercial development.

Meantime the Spanish possessions were growing in number. Mexico was subdued in 1521, and in time it became the chief seat of government for the West Indies. For purposes of administration Mexico was divided at first into two, and later into three, districts, each of which was called an Audencia. These were sovereign courts or governments, which, although in theory possessing authority confined within well-defined limits, enjoyed in fact jurisdiction in all matters civil and criminal, besides other extensive powers.

But it was not till the middle of the sixteenth century that the field of

<sup>1</sup> Columbus had been given the right to constitute the government in all lands which he might discover. Later on, when the importance of his discoveries became manifest, the Spanish sovereigns resumed the exercise of this right. See Helps, *Spanish Conquest of America*, i. 121, n. 1.

<sup>2</sup> See Helps, *ubi sup.*, Intro xv, and at pp. 92, 119, 138, and for one of these instructions in full, pp. 126-30.

<sup>3</sup> The majority of the earlier colonists were men of doubtful character. This commission of inquiry was "doubtless occasioned by various complaints made against the admiral [Columbus] by Father Buil, Magante [soldier and adventurer], and the Spaniards who had returned from Hispaniola." Helps, *ubi sup.*, i. 105; see, too, pp. 118 and 106.

conquest was narrowed by want of more land to discover, that law and government began to take settled forms in those parts where, for the previous one and a half centuries, the tardy process of colonisation had been going on. The description of "an empire upon which the sun never sets" applied to Spain then with as much force and truth as it does to the British Empire of the present time. At the height of its power and prosperity the European possessions<sup>1</sup> included the whole peninsula, the Netherlands, the Sicilies, Sardinia, Milan, and certain fortresses and districts of Tuscany; in Africa she held the kingdom of Barbary, the coasts of Gunea, and an indefinite and unmeasured expanse of other territory; in Asia, all the coasts that had been visited by her subjects; whilst in the New World her colonial possessions were Bogota, Brazil,<sup>2</sup> Chili, Cuba, Dominica, Hispaniola (Hayti), Florida, Guatemala, Jamaica, the Leeward Islands, Mexico, Nicaragua, Paraguay, Peru, Puerto Rico, Rio de la Plata, San Salvador, Trinidad, and a few small islands which the Spaniards discovered and named but never occupied, *e.g.*, the Bahamas, St. Lucia, St. Vincent, Grenada, Tobago, etc.

**Method of Government.**—In due course the form of government prevailing in Spain was copied in its exact detail in her colonies, to meet the requirements of territorial and commercial expansion. "This representation was for the most part exact and faithful. Corregidores, Regidores, Alcaldes, Procuradores, Veedores, Contadores, Judges of Residencia, and all other officials usually to be met with in the various kingdoms of Spain, were transplanted into the Indies; and flourished there. The Church was fully represented. . . . Again, the form of municipal government that prevailed in the cities of Spain was exactly copied in the Spanish colonies of America."<sup>3</sup>

In time Peru, Terra Firma,<sup>4</sup> and the other larger colonies came to possess their own Audiencias. In the middle of the seventeenth century we find Terra Firma divided into seven Audiencias. The Audiencia held for the district of Venezuela had its headquarters at Caracas, one of the several towns of that province. The adjacent island of Trinidad (the Trinity) was, until its capitulation to British arms in 1797, under the jurisdiction of the Audiencia at Caracas.<sup>5</sup>

Under the Spaniards, the administration of that island was in the hands

<sup>1</sup> See Lord Somers' *Collection of Tracts* (1820), iii. p. 304. On the same subject see Motley's *United Netherlands*, iii. p. 515, and Freeman's *Hist. Geography of Europe* (3rd ed.) pp. 544 *et seq*.

<sup>2</sup> Brazil was first discovered by the Portuguese. In 1581, when Spain conquered Portugal, it passed to the Spanish Crown.

<sup>3</sup> Helps, *ubi sup.*, iv. 296. "Municipal institutions of what may be called the modern type are of greater antiquity in Spain than in any other country in Europe—Italy, perhaps, excepted."—U. K. Burke, *A History of Spain*, i. p. 366.

<sup>4</sup> This was the northern part of South America which extended "along the North Sea from the Pacific Ocean to the mouth of the river of the Amazons upon the Atlantic."—Burke, *European Settlement in America*, p. i. 290.

<sup>5</sup> *Report of Commissioners on Trinidad*, Parl. Pap. relating to Trinidad, 1827, No. 551 App. A. p. 6; see, too, 30 *State Tr.* at pp. 478, 506-7.

of a governor, who was assisted by the "illustrious Cabildo"—"a body corporate, that partook of the mixed nature of an ecclesiastical council, a parish vestry, a municipal corporation, a council of government, and a legislative and executive council, over which the Spanish governor presided."<sup>1</sup> This corporation was a self-elected body, exercising jurisdiction partly general, partly municipal and judiciary. It had power to levy duties and taxes, and to appoint *alcaldes* (judges). The governor, assisted by the Cabildo, was permitted to make certain regulations which were allowed to have the force of law for two years and no longer, unless confirmed by the general government.

**The Commandante.**—In order to administer justice to all, the Spaniards divided the island into four "*barrios*" or wards, with an "*alcalde de barrio*" appointed to each ward. These officials, who were chosen annually, had jurisdiction in all petty criminal as well as civil matters, with the aid of an assessor. Under Chacon—the last Spanish governor of Trinidad—these wards were subdivided into numerous small districts called "*quarters*," to each of which he appointed a "*commandante*" whose duties were magisterial and administrative; for he acted as a justice of the peace and was charged with making the returns of the population and property, and the collection of taxes. These *commandantes* had the power of fining and condemning to prison; and they also acted as coroners. The office appears to have been not unlike that of constable in the Channel Islands at the present day, and it, too, was honorary.

**The Courts.**—The civil courts were six in number. One of these—the court of Intendant—was presided over by the governor, assisted by a legal adviser who attended to the technicalities. He sat and heard all matters relating to the sale of Crown lands, quit rents, revenue, etc. The judges had power to fine any one for contempt of court.

There were three criminal courts. The judges were the governor and two *alcaldes*—one to each court—and each enjoying equal and concurrent authority. They were subject to strict rules of procedure, for after inquiring into the facts of the case before them, they could, besides acquitting, merely pass sentence. In case of conviction the *alcaldes* were bound to lay their finding before the governor, whose duty it was to transmit the same to the Audencia at Caracas whence the conviction would be carried into effect, or varied, or quashed, and thence, if the sentence of that Court were appealed from, to the Royal Audencia at Madrid.

The general principle upon which the government of Spain acted was, by the exclusion of foreigners, to confine the trade and the commerce of the colonies to Spanish subjects. "It was not so much economic theory as distrust and jealousy which caused the refusal of Spain to allow any intercourse between her colonies and foreign nations."

<sup>1</sup> Joseph, *Hist. of Trinidad* (1833), p. 146. See also De Verteuil, *Trinidad* (2nd ed.) p. 188.

**The Laws of Spanish America.**—The laws of Spain were gradually introduced into the colonies. They were (apart from the Instructions given to governors) Orders-in-Council (Ordenamientos) made principally for local purposes and statute law (Fueros), which were the general and ancient customs in code-form.

Among the many Ordenamientos and Fueros in use towards the middle of the sixteenth century we find <sup>1</sup>:

The *Fuero Real de España* (first published in Spain, 1255)—a code divided into four books treating with (i) the laws for the observance of the Christian faith, public officers, *alcaldes* (judges), lawyers, notaries public, etc.; (ii) procedure; (iii) regulations respecting matrimony, legacies and estates in trust, inheritances, etc.; and (iv) the laws relating to Jews, Saracens and their slaves.

There were other Fueros in use as well, as for instance the *Fuero Viego de Castilla* (992) and the *Fuero Juzgo*. This latter code—a corruption of “Forum Judicum”—is a Visigothic code, and its origin has been traced to the year 693.

The *Siete Partidas* <sup>2</sup> (1260), compiled by Alfonso X., embraced the canon law of the time, the decrees of the great councils of Spain, and rules respecting judgments, contracts, and testaments; and the seventh *Partida* was occupied with crimes and their penalties.

A compilation which dealt principally with procedure and contracts was the *Leyes de Estillo*; another, which appeared periodically, was the *Ordenamiento Real* (1416), but this consisted of the ordinances, proclamations, and other resolutions which totally or partially repealed certain of the fueros, and also of a few explanatory provisions of the ancient codes.

The *Nueva Recopilacion de Castilla* and *Novissima Recopilacions* laid down the jurisdiction of the magistrate and the duties of the sheriffs and jailors. The latter was a modern arrangement of the former and was published for the first time about the year 1825.

But of far greater importance was the compilation known as the *Recopilacion de leyes de las Indes* (1681). This code was in fact a collection of all the laws, cédulas, and orders enacted for Spanish America collected *en masse*; it consisted of two volumes (tomos) of seven books (libros) and each book or several “*titulos*,” and some of these were again divided into “*leyes*.” In it were included the regulations respecting the functionaries of the government in the Spanish colonies.

For commercial regulations, the *Laws of Bilbao*, compiled in 1732 under

<sup>1</sup> See *Report of Commissioners on Trinidad*, Parl. Pap. 1827, No. 551, App. A, p. 6; and 5 Wheaton (1820) App. p. 32; Burge, *Colonial and Foreign Law*, i. p. 28.

<sup>2</sup> “At the time of its compilation it was not only superior to anything of the kind that had ever been attempted since the time of Justinian; it stood alone and unrivalled in the mediæval world; and for over six hundred years it remained not only the greatest text-book of Spanish jurisprudence but the greatest exclusively national code of laws of Europe.”—Burke, *ubi. sup.*, i. 282. It was first published in 1348.

the reign of Philip V., were in force in the colonies, and there were other compilations used in court practice, such as the *Elizondo*, the *Curia Philipica*, and the *Bobadilla Politica*, all of which were considered "practical" books.

**Spanish Colonies now British.**—Special reference may now be made to the colonies which originally were Spanish and which subsequently became, and still are, English.

They are numerous, but with three exceptions do not concern us; for when they became British colonies it was by way of settlement since the Spanish law and government had little or no footing in them.

They are the Leeward Islands (Antigua, St. Christopher or St. Kitts, Nevis, Montserrat, the Virgin Islands, and Dominica), Grenada, Guiana, St. Vincent, Tobago, St. Lucia, and British Honduras. The majority of these "were visited, settled, abandoned, and resettled, handed about from one owner to another in the competition of nations, thrown first into one scale and then into the other, in order to adjust for the time being the claims of rival governments."<sup>1</sup> The others which passed to Great Britain by way of conquest and cession<sup>2</sup> were Jamaica (1655), Gibraltar (1704), and Trinidad (1797).<sup>3</sup>

Although Spanish law had been established in America, it did not prevail in Jamaica at the time of its capture by the British forces in 1655: for in spite of the fact that "the Spaniards had possessed the island a century and a half, not one hundredth part of the plantable land was in cultivation when the English made themselves master of it," and they found a population of whites and slaves which together did not exceed 3,000. Within three years of their occupation the English had driven out the Spaniards and everything Spanish. And in 1662 Charles II. granted Jamaica a civil and representative government.<sup>4</sup>

Gibraltar—the first dependency secured by Great Britain during the eighteenth century—came into her possession in 1704, but it has always differed in respect of its government and laws from the other colonies, as it has been primarily a fortress and naval base, one might almost say, from time immemorial.

Of the three, Trinidad was the only British colony where the laws and government of Spain were firmly established at the time when it passed to Great Britain.

**English Law in Trinidad.**—The English law may be classified under two divisions: (1) the general enactments of the British Parliament which affected

<sup>1</sup> Lucas, *Hist. Geo. of British Colonies*, i. p. 14.

<sup>2</sup> For the mode and date of acquisition in each case see Lucas, *Hist. Geo. of the Brit. Emp.* ii. 2.

<sup>3</sup> The law governing conquered or ceded colonies differs from the law in colonies acquired by settlement, see 2 Peere Wms. 74; 50 & 51 Vict. c. 54.

<sup>4</sup> For full account of the constitutional development see E. Long, *The Hist. of Jamaica* (1774), W. J. Gardner, *Hist. of Jamaica* (New York, 1909). By the Treaty of Madrid, 1670, Britain's title to Jamaica was recognised.



Trinidad from the moment it became a British possession; (2) particular English laws made for or by this colony and which in their application have ousted Spanish legislation. By general enactments are meant those statutes or laws which come into operation in all places conquered or ceded to England and which repeal those established foreign laws contrary to them. They include the Mutiny Acts and those relating to Navigation and Trade.<sup>1</sup>

Another example is 15 Car. II. c. 7,<sup>2</sup> by which only English-built vessels were to enter the territorial waters of "any land, island, plantation, colony, territory, or place to His Majesty belonging," and "the master and three-fourths of the mariners at least" were to be English. And later it was enacted that no goods or merchandise should be imported into, or exported out of, any British colony except in ships built in England, Ireland, or the colonies—7 & 8 Will. III. c. 22, s. 2.<sup>3</sup> In 1834 by an Act of Parliament slavery was abolished throughout the British dominions<sup>4</sup>; and on July 1 the Act 53 & 54 Vict. c. 27 came in force in every British possession.<sup>5</sup>

Now, apart from statutory enactments of the nature described above, the laws of a conquered or ceded colony are never changed—subject to one condition—for this reason: that it would cause great inconvenience and hardship, and would be unwise and unfair for the new subjects to have to live under laws which they do not understand, and of which they are wholly ignorant.<sup>6</sup> Thus the old French law was retained in Quebec and St. Lucia, the Napoleonic code in Mauritius, Roman-Dutch law in Ceylon, British Guiana, and Cape Colony, and Spanish law in Trinidad.

The condition above referred to is this: that should the laws of the newly ceded or conquered colonies be contrary to the fundamental principles of the English law, then they cease to be of any effect the moment cession or conquest takes place.

In most well-drawn treaties or articles of capitulation it is usually expressed that the administrative system of the colony or place should continue as before except that it should be carried out in the name of the conquerors.<sup>7</sup> But on the surrender of Trinidad to the British forces in February of 1797 the Treaty of Capitulation omitted to provide for the continuance of the

<sup>1</sup> Clark, *Colonial Law*, p. 15; Tarring, *Law relat. to the Colonies*, pp. 19-20.

<sup>2</sup> Rp. 10 Ed. VII. & 1 Geo. V. c. 8, s. 96.

<sup>3</sup> Rp. Stat. Law Revision Act, 1867.

<sup>4</sup> 3 & 4 Will. IV. c. 73, s. 12 (last half thereof).

<sup>5</sup> Except four colonies—*vide* s. 16 thereof. For a complete collection of these general enactments see the first volume of Piggott, *Imperial Statutes*.

<sup>6</sup> 1 Black. Com. 107-8; Chitty, *Prerogative* 30; see *Freeman v. Fairlie*, 1 Moo. Ind. App. p. 324.

<sup>7</sup> When Havannah capitulated to this country in 1762 the articles of capitulation (signed on August 14) enacted that the system of administration was to be "under the same laws and administration of justice, and under such conditions as they have done hitherto in the dominion of Spain, in every particular . . ." save that "they shall be governed in his Britannic Majesty's name . . ." (Arts. XII. and XIII.).

Spanish law. The new authorities, however, rectified this omission by issuing a circular to that effect four days after the conquest; and on June 19, 1813, this principle was again confirmed. It was then proclaimed by the King in Trinidad "that all such public acts and judicial proceedings which before the surrender of the said island to us were in the name of his Catholic Majesty shall henceforth be done, issued, and performed in our name; and that the same Courts of Judicature which subsisted in the said island previous to its surrender thereof to us shall be continued in the exercise of all the judicial powers belonging to them, in all criminal and civil cases, and that they shall proceed according to the laws by which the said island was then governed. . . ."<sup>1</sup>

Therefore those laws of Spain which were contrary to the principles of the British Constitution (*e.g.* torture) ceased to exist at the moment when England acquired that colony, and simultaneously the jurisdiction of the Audencia, within which the island lay, became void; all appeals which previously lay to them went to the English governor or to England; and all the judicial and other powers of the Spanish governor in like manner became vested in the English governor. Nevertheless the Spanish law remained the basis of the colony law. Such was the situation in Trinidad in 1797.

**Particular Enactments.**—But Orders-in-Council and Proclamations issued sometimes by the king and sometimes by the governor, at times altering, at others repealing the Spanish laws, were continually made from the first year of British rule. These were passed according to the demands of the people and of commerce; their preamble in many cases stated in paternal language that their object was "the better preservation and security of the properties of all his Majesty's loving subjects." They amended principally the Spanish laws on the registration of wills and deeds, title to lands, sale of land by execution, quit rents, etc.

An Order-in-Council dated August 5, 1822, repealed "the 5th law of the 14th title of the 5th book of the Recopilacion de las leyes de las Indias." And there were other Orders-in-Council which modified the Spanish laws relating to prisons and prisoners, debts, marriages, etc.

The proclamation establishing for the first time the exclusive use of the English language in all judicial proceedings and records was issued after seventeen years of British administration. Dated to commence on January 1, 1814, it ran thus: "All the proceedings in the tribunals of Justice of our said island shall be hereafter had and made in the English tongue; and that all records of judicial or other proceedings, of whatever nature or kind soever, to be had and made therein, or be used in the same tribunals, shall be used in the English language, and none other; nor shall any proceedings be

Report of Commissioners, *ubi sup.* App. D, p. 176. Note that this Proclamation was issued because it appears that doubts had been expressed by the inhabitants as to the authority of the Spanish laws.

suffered to be had, made, or presented in any other language than that of the English tongue.”<sup>1</sup>

But the work of ousting the Spanish laws was not left entirely to the Proclamation and Order-in-Council. Statute law, apart from the class already adverted to, has some say in the matter, for there were a score of statutes passed exclusively for Trinidad.<sup>2</sup>

In consequence of the recommendation of a Royal Commission in 1823 there was instituted a Council of Government in 1831 by William IV., which in due course, and when there was occasion to do so, proceeded on a large scale to abolish the Spanish laws, and to introduce English enactments in their stead—a process that continued up to 1848. These were culled, so to speak, from the common law and statute law of England, though occasionally from the laws of other colonies.

For instance, the English common law as to offences against the person and against property was, among others, converted into ordinances of Trinidad in 1842. In 1844 the common law of England dealing with indictable offences was imported into Trinidad. The laws of England as to trial by jury were also supplemented by an ordinance passed in the same year.<sup>3</sup>

Sometimes the ordinance or local-made law was the exact transcript of an Act of Parliament. An example of this is to be seen by comparing the first four sections of Ordinance 24 on Inheritance<sup>4</sup>—repealed by 7 of 1902—with the first four sections of 3 & 4 Will. IV. c. 106.

On March 1, 1848, the Governor, with the advice of the Legislative Council, enacted that “the laws of Spain, so far as the same relates to actions and rights of action and the forms of actions, and the form and mode of procedure in the same, and as to costs, shall be and the same is hereby repealed”; and the English common law in reference thereto was introduced in their stead.<sup>5</sup> Yet another factor in influencing the growth of English and impeding the use of Spanish laws is what is known as the unwritten law or case law.

**Spanish Law now in Force.**—The result of the Spanish laws being gradually “revoked, abrogated, rescinded, and annulled” in Trinidad in the various ways enumerated above naturally leads one to expect that there are no laws of old Spain still forming part of the colony law.

But in spite of the fact that for fifty years the process of erasing Spanish legislation went on there, at the end of that time certain portions of that law

<sup>1</sup> Report of Commissioners, *ubi sup.* App. D, p. 179. Note that this refers to the proceedings and not to the laws themselves.

<sup>2</sup> Tarring, *Law relating to Colonies*, p. 240. See also Piggott, *Imperial Statutes*, vol. ii. p. 570.

<sup>3</sup> Vide *Laws of Trinidad* (ed. 1902-1905), vol. vi.

<sup>4</sup> Vol. i. *Laws of Trinidad* (ed. 1902-1905).

<sup>5</sup> Ord. 274, vol. v. *Laws of Trinidad* (ed. 1902-1905).

were still unchanged, and to-day find their place in the general law of the Colony. These govern<sup>1</sup>:

1. The construction of deeds made before June 10, 1844.
2. The disposition of property by wills made before June 10, 1844.
3. The forms of wills made before January 13, 1845.
4. The institution of the heir in cases of birth before March 12, 1846.
5. The intestacy and succession to the person before the same date.
6. The right of illegitimate persons born before March 12, 1846, to take as next of kin to their mothers, and *vice versa*.

These laws are occasionally aroused from their slumbers when, as happened some years ago, a few deeds dated before 1845, which were discovered buried in the earth, formed the subject of litigation.

**The Influence of Spanish Law.**—That the Spanish law in no way influenced the growth of English law, which began from the day the island passed to Great Britain, may be gathered from what has been said already. To state it briefly, the growth of English legislation in Trinidad was at first slow; then, when the Council of Government was granted, it grew more rapidly, till eventually the Spanish law was ousted, with the exception of those portions enumerated. And in changing, the statute law, the common law, and case law of England *only* were used, though, with the introduction of immigrant labourers from India, certain portions of the Indian law were incorporated into the colony law.

It has already been shown how the principles of the British Constitution affected the existence of portions of the Spanish law, and how the statute and common law of England were taken to replace abrogated Spanish laws; it now remains to show the way in which English case law helped the growth of English and impeded the use of Spanish legislation. A case decided, say three hundred years ago, is still held as a precedent. Two examples must suffice. In 1678 it was held in *Hammond v. Howell* (2 Mod. p. 218) that an action will not lie against a judge for what he does judicially though erroneously, and this has been the law ever since. The law as to the immunity of jurors was decided as far back as 1607 in *Floyd v. Barker* (12 Rep. p. 23).

The fact that only those lawyers qualified in England were permitted to practise in Trinidad must undoubtedly have acted as a setback to the use of Spanish law. These practitioners were familiar only with the English legal text-books, and when it is considered that the judges (after 1808) were men whose acquaintance with English law not only extended over a considerable number of years, but whose legal training had been confined exclusively to English law, it is easy to understand the countenance given to case law, and little wonder that the one system successfully displaced the other.

Again, a close study of the history of Trinidad will reveal the fact that the tendency to make English law the colony law was encouraged by the

<sup>1</sup> Vide *Journal of Comp. Leg.* ii, 293; Tarring, *ubi sup.* p. 17.

inhabitants as early as 1810, when we find them petitioning the king to that effect.

Moreover, appeals to the Privy Council began early in the history of Trinidad under British rule. It seems hardly necessary to say that their decisions helped to some extent to cause the disuse of the Spanish law, for whenever the two systems were at variance the adjudications of the Privy Council prevailed.

In conclusion, it must be stated that Trinidad has suffered the fate of most of the British colonies where foreign law was firmly established at the date of conquest or cession, in that the introduction of the English law was effected haphazard and piece-meal. But whereas the laws introduced in most colonies were fused in some instances with the existing system, no such process took place in Trinidad, where there has been virtually a complete displacement of the Spanish law.

## THE NEW BANKRUPTCY ACT.

[Contributed by W. N. STABLE, ESQ.]

ALL legislation is a series of experiments on the body politic, and the Acts relating to bankruptcy do not constitute an exception. The system inaugurated by the Act of 1883 (and amended by the Act of 1890) has proved on the whole a very successful experiment, and organically it is to remain unchanged, but in a number of particulars it has shown itself susceptible of improvement, and the fruits of thirty years' experience of the working of the system are now embodied in the new Act—the Bankruptcy and Deeds of Arrangement Act, 1913. This Act—referred to hereinafter as the Act—comes into operation on April 1, 1914. It will be convenient to deal with the Act under the two heads into which it is divided.

### PART I. BANKRUPTCY.

**Offences.**—The first five sections of the Act are concerned with offences by persons who have been adjudged bankrupt. Three new offences are created under the Debtors Act, 1869, as amended by this Act, viz. (1) failure to keep or preserve proper books of account by a person engaged in any trade or business who on any previous occasion has been adjudged bankrupt or who has made a composition or arrangement with his creditors (s. 3); (2) gambling or rash and hazardous speculation by a person engaged in any trade or business who is adjudged bankrupt or in respect of whose estate a receiving order has been made (s. 4); (3) trading under a different name by an undischarged bankrupt without disclosing the name under which he was adjudicated bankrupt (s. 5 [d]). The law as to obtaining credit by an undischarged bankrupt is made more stringent, while the common law rule as to the onus of proof in offences under the Debtors Act, 1869, where absence of intent to defraud is a mere defence, is by this Act made statutory. The Act further creates a new but alternative method of prosecuting summarily offences under the Debtors Act, 1869.

**Jurisdiction.**—The law defining the scope of the English bankruptcy jurisdiction is materially extended by ss. 8 and 9, and these sections are perhaps the most interesting from the point of view of comparative jurisprudence. S. 8 of the Act provides the first statutory definition of “a debtor”—a definition considerably wider than that to be derived from decided cases

—and this section enables foreigners in certain cases to be brought within the reach of the English bankruptcy law who under the old law would have been immune. S. 12 of the Act puts every married woman who carries on a trade or business *whether separately from her husband or not* in the position of a feme sole, and renders the income of her separate property, though enjoyed subject to a restraint on anticipation, available for distribution among her creditors if an order of the Court is obtained by the trustee. The section also makes such married woman liable to be served with a bankruptcy notice on a judgment or order whether expressed to be payable out of her separate property or not. The Act does not directly affect the position of a married woman as such who does not carry on a trade or business. By s. 24 the enactments relating to bankruptcy are applied to limited partnerships as though they were ordinary partnerships. S. 21 still further assimilates the administration in bankruptcy of the estate of a person dying insolvent to the administration of the estate of a person who is adjudged bankrupt. The petition for the administration of the estate in bankruptcy may be presented by the legal personal representative of the deceased insolvent.

**Property of Debtor.**—The law as to the property of a debtor available for distribution among his creditors is altered by the more stringent provisions of s. 13 dealing with contracts made in consideration of marriage which is substituted for s. 47 (2) of the Bankruptcy Act, 1883, and by s. 14 which renders void *general* assignments of book debts, subject to certain exceptions, by a person engaged in any trade or business as against the trustee in bankruptcy unless the assignment has been duly registered under the Bills of Sale Act, 1878. It may be convenient at this point to mention s. 11 (3), which postpones the claim of the trustee in a prior bankruptcy in respect of the after acquired property of a bankrupt to that of the trustee in a subsequent bankruptcy leaving the prior trustee with a right of proof in the subsequent bankruptcy, and *semble* that in a third bankruptcy the trustee of the first bankruptcy has no rights at all. It should be noticed that the right to disclaim onerous property is extended to the Official Receiver who succeeds a trustee in the administration of an estate, and the time during which the Official Receiver may exercise his option begins to run afresh from the date of his so becoming trustee. S. 16 introduces important changes in the practice of the law of bankruptcy. S. 25 protects authors or others who have a claim to royalties on the sale or performance of a work by a person who becomes bankrupt. Other sections which demand attention are as follows: (i) s. 10, which provides additional protection to a person who makes a payment of money or delivery of property to a person subsequently adjudged bankrupt; (ii) s. 11 (1), which extends the law relating to *bona fide* dealings for value with an undischarged bankrupt in respect of *personal* property to dealings in respect of *real* property. This sub-section is retrospective. Sub-s. 2 of the same section imposes a duty on the bankers of an undischarged bankrupt to notify the fact to the proper authority; (iii) s. 15, which protects sheriffs

selling goods under an execution ; (iv) s. 18, which curtails the landlord's power of distress, and (v) s. 22, which deals with debts that include interest and which it is anticipated will principally affect the position of money-lenders.

The above note will direct attention to the most important changes in the law relating to bankruptcy, but the task of differentiating between what is essential and what is not is a difficult one, and the result apt to be misleading. The Act in so far as it deals with bankruptcy is piece-work superimposed on the existing law ; it consists of a mass of detail and as such can only be studied in detail.

## 6

## PART II. DEEDS OF ARRANGEMENT.

This part of the Act consists largely of new law. Considerable additions are made to the obligations of a trustee under a deed of arrangement whether made for the benefit of creditors generally or otherwise. Severe penalties to be enforced by summary procedure are imposed in addition to and not in substitution for existing remedies. By s. 28 a Deed of Arrangement made for the benefit of the creditors *generally* shall be void unless a majority in number and value of the creditors (as defined in sub-s. 5) shall have assented to the deed within the period prescribed in the section, and the trustee must file a statutory declaration to this effect. By s. 31 a creditor who has received from the trustee a written notice is given one month after the expiration of which he will not be entitled to treat the execution of the deed as an act of bankruptcy on which to found a petition, but if by virtue of the Deeds of Arrangement Act, 1887, or the present Act the deed becomes void, the restriction on assenting creditors disappears.

**Trustees of Deeds.**—The position of a trustee under a deed of arrangement executed subsequently to this Act, though sharply defined, will undoubtedly demand considerable vigilance. S. 29 (1) provides for the giving of security by the trustee equal to the estimated value of the assets available for distribution among the unsecured creditors, while failure to do so may under s. 30 render the Trustee liable on summary conviction to a fine. This latter section imposes a similar penalty on a trustee acting under a deed of arrangement which to his knowledge has become void. S. 32 provides for the periodical rendering of accounts by a trustee to each of the creditors, and the accounts of a trustee may be submitted to an official audit, of which the trustee *may* be ordered to bear the cost. S. 25, sub-s. 2 (*b*), of the Bankruptcy Act, 1890, also dealing with the periodical transmission of accounts by the trustee, is amended in the second schedule to the Act of 1913, while s. 33 exposes the trustee to the liability of a fine on summary conviction for default in transmitting such accounts. S. 34 makes it a misdemeanour on the part of the trustee to pay to a creditor a larger proportion of his debt than he is entitled to receive, and s. 39 renders a trustee liable on summary conviction to a fine not exceeding £20 on failure



to give each available creditor a written notice of the avoidance under the Act of a deed of arrangement. From a perusal of these sections prospective trustees will turn with some measure of relief to ss. 38 and 40, which afford protection to the trustee but only in the particular cases there specified. S. 37 extends the Deeds of Arrangement Act, 1887, to instruments executed for the benefit of three or more creditors of an insolvent debtor, but the previous sections of the Act, except in so far as they impose penalties on a Trustee for failure to transmit accounts, are not applied to this class of instruments. Jurisdiction under this part of the Act is assigned to the High Court, or to the Court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the registration of the deed. No part of the Act applies to Ireland or Scotland.

**The Discharge in Bankruptcy.**—One omission is matter for regret. The Act says nothing about a bankrupt's discharge. It leaves him still free to apply or not, as he pleases, with the result that only one bankrupt in five in fact does so. The number of undischarged bankrupts going about has been reckoned at 70,000. The inference is but too clear that bankrupts do not venture to face the Official Receiver's report and the censorship of the Court. Why should not a bankrupt be compelled to apply for his discharge within six months on pain of being guilty of a contempt of Court? This is the law in some parts of the British Dominions, and it is difficult to understand what can be urged against its adoption here.



# REVIEW OF LEGISLATION, 1912.

## TABLE OF CONTENTS.

	PAGES
INTRODUCTION . . . . .	42-44
<i>Contributed by Sir Courtenay Ilbert, G.C.B.</i>	

### FOREIGN:—

1. EGYPT . . . . .	45-50
<i>Contributed by Norman Bentwich, Esq.</i>	
2. FRANCE . . . . .	50-53
<i>Contributed by M. René A. Faux, Avocat.</i>	
3. GERMANY . . . . .	53-56
<i>Contributed by Ernest J. Schuster, Esq., LL.D.</i>	
4. RUSSIA . . . . .	56-61
<i>Contributed by L. P. Rastorgoueff, Esq., of the Russian Bar.</i>	
5. UNITED STATES OF AMERICA—FEDERAL AND STATE LEGISLATION	61-65
<i>Contributed by R. Newton Crane, Esq.</i>	

### BRITISH EMPIRE:—

I. BRITISH ISLES—	
1. United Kingdom . . . . .	66-68
2. Isle of Man . . . . .	68
3. Jersey . <i>Contributed by E. T. Nicolle, Esq.</i> . . . .	68-69
4. Guernsey . . . . .	69
II. BRITISH INDIA— <i>Contributed by Sir Courtenay Ilbert, G.C.B.</i>	
1. Acts of Governor-General in Council . . . . .	70-72
2. Madras . . . . .	72
3. Bombay . . . . .	73-74
4. Bengal . . . . .	74
5. Eastern Bengal and Assam . . . . .	74-75
6. United Provinces . . . . .	75
7. Punjab . . . . .	75
8. Burma . . . . .	76
9. Regulations under 33 Vict. c. 3 . . . . .	76
10. Ordinance under s. 23 of the Indian Councils Act, 1861 . .	76

## III. EASTERN COLONIES—

PAGES

1. Ceylon . . .	<i>Contributed by</i> Lewis Maartensz, Esq.	77-79
2. Hong-Kong . . .	" " C. G. Alabaster, Esq.	79-83
3. Straits Settlements . . .	" " A. de Mello, Esq.	83-87
4. Federated Malay States . . .	" " " " " "	87-91
5. Mauritius . . .	" " A. Herchenroder, Esq.	91-94
6. Seychelles . . .	" " " " " "	94
7. Wei-hai-wei . . .	" " " " " "	94

## IV. AUSTRALASIA—

## 1. Commonwealth of Australia

	<i>Cont. by</i> R. R. Garran, Esq., C.M.G.	95-104
2. New South Wales . . .	" " N. de H. Rowland, Esq.	104-110
3. Queensland . . .	" " J. Walsh, Esq., B.A.	110-120
4. South Australia . . .	" " A. Buchanan, Esq.	120-131
5. Tasmania . . .	" " F. B. Edwards, Esq., LL.B., B.A.	132-137
6. Victoria . . .	" " C. J. Zichy-Wonarski, Esq., K.C., and W. Harrison Moore, Esq.	137-146
7. Western Australia . . .	" " F. L. Stow, Esq., LL.D.	146-152
8. Papua . . .	" " C. E. Herbert, Esq.	152-158
9. The Territory for the Seat of Government . . .	" " " " " "	158
10. Dominion of New Zealand		

*Contributed by* James Christie, Esq., LL.B. 159-168

11. Fiji . . .	" " The Hon. A. Ehrhardt, K.C.	168-169
12. Western Pacific . . .	" " " " " "	169

## V. SOUTH AFRICA—

1. Union of South Africa .	<i>Cont. by</i> O. Pirow, Esq.	169-180
2. Cape Colony . . .	" " E. Manson, Esq.	180
3. Natal . . .	" " R. E. Willcocks, Esq.	180-181
4. Orange Free State . . .	" " " " " "	181-182
5. Transvaal . . .	" " " " " "	182-183
6. Southern Rhodesia . . .	" " " " " "	183-185

VI. WEST AFRICA—*Contributed by* J. D. Casswell, Esq.

1. Gambia . . .		185
2. Gold Coast :		186
(i) Colony . . .		186-187
(ii) Northern Territories . . .		187
(iii) Ashanti . . .		187-189
3. Sierra Leone . . .		189-190
4. Northern Nigeria . . .		190-192
5. Southern Nigeria . . .		

## VII. EAST CENTRAL AFRICA—

1. East Africa Protectorate.	<i>Cont. by</i> R. E. Willcocks, Esq.	193-194
2. Uganda . . .	" " E. Manson, Esq.	194-195
3. Somaliland Protectorate . . .	" " R. E. Willcocks, Esq.	195-196
4. Nyasaland Protectorate . . .	" " E. Manson, Esq.	196-197

## TABLE OF CONTENTS.

41

VIII. SOUTH ATLANTIC—*Contributed by* Edward Manson, Esq. PAGES

1. Falkland Islands . . . . . 197-198
2. St. Helena . . . . . 199

## IX. NORTH AMERICAN COLONIES—

1. Dominion of Canada. *Contributed by* J. G. Archibald, Esq. . 199-200
2. Alberta . . . . . „ „ J. S. Henderson, Esq. 200-203
3. British Columbia . . . . . „ „ J. G. Archibald, Esq. 203-204
4. Manitoba . . . . . „ „ J. S. Henderson, Esq. 204-207
5. New Brunswick . . . . . 208-210
6. Nova Scotia . . . . . 210-215
7. Ontario . . . . . 215
8. Prince Edward Island . . . . . 216-217
9. Quebec . . . . . 217-219
10. Saskatchewan . . . . . *Contributed by* J. S. Henderson, Esq. 219-221
11. Newfoundland . . . . . 221-224

## X. THE WEST INDIES—

1. The Bahamas. *Contributed by* Hon. Harcourt Malcolm, K.C. 224-227
2. Barbados . . . . . „ Wallwyn P. B. Shephard, Esq. 228-230
3. British Honduras „ „ „ „ „ 230-231
4. Jamaica . . . . . „ R. E. Willcocks, Esq. . 231-233
5. Turk's and Caicos Islands „ „ „ „ „ 233
6. Trinidad and Tobago „ Wallwyn P. B. Shephard, Esq. 233-237
7. Windward Islands :
  - (i) Grenada. *Contributed by* Sir Charles J. Tarring . . 237-238
  - (ii) St. Lucia „ „ Wallwyn P. B. Shephard, Esq. . 238-239
  - (iii) St. Vincent „ „ „ „ „ 239-240
8. Leeward Islands—*Contributed by* Sir Charles J. Tarring
  - Federal Colony . . . . . 240-241
  - (i) Antigua . . . . . 241
  - (ii) Dominica . . . . . 242
  - (iii) Montserrat . . . . . 242
  - (iv) St. Christopher and Nevis . . . . . 242
  - (v) Virgin Islands . . . . . 243

## XI. MEDITERRANEAN COLONIES—

1. Gibraltar . . . . . *Contributed by* R. E. Willcocks, Esq. . 243
2. Malta . . . . . „ „ J. D. Casswell, Esq. . 245
3. Cyprus . . . . . „ „ „ „ „ 245-246

# REVIEW OF LEGISLATION, 1912.

## INTRODUCTION.

[Contributed by SIR COURTENAY ILBERT, G.C.B.]

OUR annual reviews of current legislation are necessarily brief and meagre, but their tendency is to increase in bulk. The review for 1911 covered 170 pages, the review for 1912 extends to over 200 pages. The number of people who now speak the English language is computed at 160,000,000. Their legislative energy is prodigious. The ten tongues of Homer, the hundred tongues of Virgil, could not rehearse the motley host of their laws.

The laws of some foreign countries occupy a place in the review, and among countries classed as foreign Egypt comes first in order. The activity of Egyptian legislation during 1912 was remarkable. The statutes and decrees of the year included provisions dealing with the administration of justice, the condition of peasant proprietors, and the preservation of antiquities.

Few provisions of the French Civil Code are better known than the famous Art. 340, which reversed the policy of the National Convention about illegitimate children by declaring emphatically and concisely that *La recherche de la paternité est interdite*. This article has now been repealed, and a new article permits, under restrictions, the institution of an action for the recognition of paternity.

Russia has organised a system of elected and salaried justices of the peace, has established Peasants' Courts, and has followed the lead of other European countries by making legal provision for the relief of workmen during sickness, and for imposing on their employers the duty of insuring them against accidents.

Dr. Schuster has described some features of German legislation.

The legislation of the United States illustrates the recent tendency in that country both to increase the powers of the State and to extend Federal powers to spheres formerly reserved for action by the several States. Congress set up a Children's Bureau as an adjunct of the Department of Commerce and Labour, and directed it to investigate all matters pertaining to the welfare of children and child life in all classes. Congress also established a Commission of Industrial Relations, consisting of nine persons, of whom three were to be employers of labour and three representatives of organised labour. The Commission is charged with the duty of seeking to discover the underlying causes of dissatisfaction in the industrial situation throughout the country, is empowered to hold sittings and public hearings in any place in the United States, and is directed to report to Congress. Similar Commissions had previously been established by several of the State legislatures,

and have, with varying powers, regulated, or recommended regulations for, the rate of wages and hours of labour.

Most of the State legislatures held no sittings in 1912, and the volume of State legislation was therefore comparatively small. But it presented some features of interest. Arizona, which was only admitted as a State on February 14, 1912, began at once to pass a vast number of Acts on a great variety of subjects, and the list of these subjects gives "a significant insight into the trend of feeling with respect to State legislation in the Western States." Arizona is one of the States which has adopted the referendum, a system about the working of which in 1912 a useful table has been appended by President Lawrence Lowell to his recent lectures on *Public Opinion and Popular Government*.

The laws of British India for the year include measures for the regulation of provident insurance societies and life assurance, for the protection of wild birds and animals, for the registration of medical practitioners in the Bombay Presidency, and for the sanitation of mining settlements in Bengal.

Coming to Eastern Colonies, it may be noted that Hong Kong, as the neighbour of China, has had to pass Ordinances for deporting undesirable foreigners and for driving out debased Chinese coins. The latter process appears to have caused greater trouble than the former and led to a Boycott Prevention Ordinance.

The establishment in 1909 of one Federal Legislative Council for the whole group of the Malay States has led to much general legislation for those States, and the enactments passed during the last four months of 1912 were very voluminous. The "Eastern Colonies" include such small outlying fragments as the Seychelles and Wei-hai-wei, but their legislation in 1912 was only of local interest.

The Australian legislation of the year presented features of great interest and importance. The six Bills for amending the Constitution by increasing the power of the Commonwealth had to undergo the ordeal of the referendum, and failed to pass it. A comprehensive Navigation Bill was reserved for the King's assent, which it has since received. The Inter-State Commission Act set up a Commission with powers somewhat resembling those of the Railway and Canal Commission of the United Kingdom and the Inter-State Commerce Commission of the United States of America. The Commission is directed to investigate a large number of specified subjects affecting the trade and industries of Australia and is empowered to investigate matters affecting the conservation and navigation of rivers, and to hear and determine questions relating to undue preference and the reasonableness of rates. The Act conferred on the Commission powers to compel the attendance of witnesses and the production of documents, but the conferment of these powers has been declared by the Judicial Committee *ultra vires* of the Commonwealth Legislature.<sup>1</sup>

<sup>1</sup> *Attorney-General of the Commonwealth of Australia v. Colonial Sugar Refining Company (Limited) and others*, Dec. 17, 1913.

Two Bounties Acts, one relating to wood pulp and rock phosphates, the other to sugar, and a Manufacturers' Encouragement Act, illustrate the economic views which have found favour with the Labour party in Australia. They make the grant of bounties conditional on wages and conditions of employment being found to be satisfactory. An amendment of the Defence Act makes military training compulsory, and imposes penalties for absence from drills. A Copyright Act schedules the British Copyright Act of 1911, and adopts it with the necessary local modifications. A Referendum Act extends to voting on a referendum the provisions about absent voters and about the publication and expenditure which had been applied by an Act of 1911 to voting at an election. Newspapers must make returns showing the amount paid for insertion of matter relating to the referendum and the persons by whom the payments were made. Another Act provides for the distribution of a pamphlet setting forth within the limits of 2,000 words the arguments for and against a law about which the electors are to be consulted. So anxious is the Legislature to provide for the instruction of the electors and to guard against any contamination of the fountains of instruction.

The New South Wales Legislature made great progress with consolidation of its statute law, and dealt with subjects of frequent recurrence in Australian legislation, such as education, closer settlement, suburban housing, and industrial arbitration, a field in which the rotation of experimental crops is very rapid. The Legislature raised the salary of its members from £300 to £500 a year, with £750 for the leader of the Opposition.

The legislation of the other Australian States was also abundant and multifarious. We learn incidentally that the whole of the statute law of Victoria is again being consolidated by one of the judges.

New Zealand has, among other things, been amending its Defence Acts, extending the scope of widows' pensions, altering the administrative provisions of its land laws, and regulating its public service.

The Parliament of the Union of South Africa passed several important Acts, among which may be specially mentioned an Act for granting compensation to persons suffering from miners' phthisis, that scourge of South African mines, a comprehensive Defence Act, and a law for the irrigation of the parched and thirsty South African land. A full account is given of the Ordinances passed in 1912 by the several States, and by Southern Rhodesia.

The Ordinances for West and East African colonies and protectorates deal with many subjects, and show, among other things, that the cinematograph has found a home in those tropical climes, as well as in the chillier Falkland Islands.

The interesting summaries of Canadian legislation would suggest many comments if space permitted, but must be left to speak for themselves. So also must the summaries of West Indian legislation.



# FOREIGN.

## I. EGYPT.

[Contributed by NORMAN BENTWICH, ESQ., *Inspector of the Ministry of Justice, Cairo.*]

### Laws of general public interest—48

There was remarkable activity during the year 1912 in the output of legislation in Egypt, no less than forty "laws" having been passed in that period, besides a number of "decrees" of general public interest which are included in the legislation of the year. For some years past it has been usual to number such decrees in their proper places among the "laws" in the narrower sense; but the system has not been followed, and these decrees, though appearing in the collection of the legislation, are not numbered. A considerable part of the legislation affects especially the law applied by the Mixed Courts, the new deliberative assembly, consisting of judges of the Mixed Courts, constituted in accordance with an agreement with the Powers embodied in Law No. 17 of 1911, which has commenced its functions by adopting a series of projects for the reform of the Mixed Codes. Among the laws which aroused particular local interest are those instituting a local unpaid magistrature, and protecting against seizure the property of small peasant-proprietors.

**Taxation Laws.**—No. 1, 30. Law No. 39 fixes the Budget for the year.

**Mixed Tribunals.**—Law No. 2 modifies the rules, prescribed by the General Regulations, of the Mixed Courts, for the election of the Vice-Presidents (the actual president) of the Mixed Court of Appeal and the Mixed Court of First Instance, in accordance with the changes made by Law No. 10 of 1911. It provides that the foreign judge who presides over the Court of Appeal is to be elected by ballot by an absolute majority of the foreign and native members of the Court, while the foreign judges who preside over the Courts of First Instance are to be chosen by ballot by the absolute majority of the same body from a list prepared by the general assembly of each such Court. The law also provides for a general assembly of the members of all the Courts (1) for the purpose of the elections, (2) for deliberation upon projects of legislation within their competence, and affairs

of common concern, or affecting the whole body of the judiciary, and for application of disciplinary measures to the judges.

Law No. 32 introduces an amended scale of the court fees in Civil matters.

Law No. 10 modifies the rules as to the appointment of trustees in bankruptcy (syndics). It provides that each Court shall draw up a list of such persons annually from a number of candidates presented by the college of commercial assessors. The list of experts is likewise to be revised every year.

**Native Courts.**—Law No. 17 modifies the conditions of service of the judges in the native Courts of Appeal. In order to settle a controversy as to the permanence of the term of judicial office, it is provided that only those judges who have not been in the service of the Government in any capacity whatever shall be appointed under a terminable contract, which shall be for a period of not less than two nor more than three years. At the end of that period the Council of Ministers, after hearing the views of a committee of judges, shall decide whether they are to be engaged permanently.

After twenty years' service in the Court of Appeal a judge who has reached the age of fifty will be entitled to retire with a pension of half his salary. Provision is made for the retirement of a judge who is not regarded as possessing all the powers required for the exercise of his functions. A committee composed of the President and Vice-President of the Court, together with five judges annually elected, may decide that his services should be dispensed with, provided that at least five members of the committee concur, and he is then placed on pension upon special terms. The question as to the fitness of a judge is submitted to the committee by the Minister of Justice, after obtaining the approval of the Minister of Finance; and the committee contains a majority of native or foreign judges according as the application is concerned with a native or foreign member of the Court.

**Criminal Law.**—Several important amendments of the Penal Code are made by Law No. 12. Art. 1 provides that any person condemned to a term of imprisonment not exceeding three months shall have the option of serving his sentence by work outside the walls of the prison instead of being confined, unless the Court orders otherwise.

Art. 2 amplifies the provisions against assisting offenders to escape from justice. The Code hitherto only provided for the punishment of those who gave assistance to those actually accused of a crime or misdemeanour; while the new article applies to those who assist an offender, even before he is prosecuted, to escape from justice. The article is founded on Art. 214 of the Indian Criminal Code.

Art. 3 of the Law is directed against usury: it provides that whoever takes advantage of the weaknesses or passions of a borrower by making him a loan at a rate exceeding the legal maximum rate of interest shall be liable to a fine not exceeding £10; while for a second offence within five years the punish-

ment may be imprisonment up to two years. The habitual practice of lending money at a rate of interest exceeding the legal maximum is made punishable by the same penalties.

**Civil Law and Civil Procedure.**—Several laws modify the articles of the Mixed Codes. The effect of the inscription of a mortgage (*hypothèque*) is modified by Law No. 24. Hitherto such inscription guaranteed only two years' interest in addition to the capital, if interest was due when the proceeds of sale were distributed. The new Law extends the guarantee to two years' interest, and any further interest accruing up to the time of the distribution of the proceeds of sale. The change is introduced into the Native Civil Code by Law No. 34.

Law No. 25 adds a paragraph to an article of the Mixed Code of Civil Procedure which enables the Government and Public Departments to resort to arbitration when questions arise on contracts for public works, supplies, and concessions.

Law No. 27 amends an article of the Mixed Civil Code dealing with the servitude of passage for irregular water, and gives a right of carrying drainage water over neighbouring land to the nearest public drain, subject to the payment of compensation. Hitherto there was only a right of passage for irrigation water.

Law No. 31 embodies a reform of the procedure for expropriation of immovables before the Mixed Courts.

**Legislative Council.**—Law No. 7 confirms for members of the Legislative Council the right of addressing questions to Ministers concerning administrative matters of general interest, under the condition that they give five days' written notice of their questions. The Organic Law, however, which was promulgated in 1913, and contains a constitution, replaces the law of 1912.

**Justice.**—Law No. 8 modifies the functions of the special tribunals which administer justice in the oases of Baharzeh, Dakhleh, and Khargueh; it establishes for them certain special rules of criminal procedure, and declares that in civil matters they shall take cognisance of such local customs as are not in conflict with principles of equity or natural law.

**Cantonal Courts.**—Law No. 11 provides for the establishment of local Courts known as Cantonal Courts, with the object of bringing petty justice, especially in civil affairs, more completely within reach of the people. The Courts are formed normally of five unpaid local notables, three constituting a Bench; but the professional judge of the Summary Court of the district may sit either alone or with two members of the Court.

The notables are appointed annually by the Minister of Justice, being chosen for each province from lists prepared by the Procureur-Général, the Governor, and the President of the First Instance Tribunals of the province. They must be twenty-five years of age, able to read and write, proprietors of land within the district, bear a good reputation, and hold no Government office. Their competence in civil affairs is final in claims relating to movables not

exceeding 500 piasters (£5) in value, and in claims relating to wages of labourers, damage to fields and crops, and payment of rent not exceeding double that sum, as well as in certain specific agricultural matters of greater value. It is subject to appeal before the judge of the Summary Court. They are competent (*inter alia*) in claims relating to immovable property where the value does not exceed 1,000 piasters. The parties must be domiciled or reside within the area of their jurisdiction. Their criminal jurisdiction is limited to cases of contravention punishable by a fine not exceeding 25 piasters, to minor assaults, and to cases of refusal to render assistance when legally called upon to do so by the omdeh (headman) of the village. They can sentence to imprisonment only up to twenty-four hours; and such sentences are subject to appeal before the Summary Courts.

All civil matters, whether within their competence or that of the Summary Court, must be submitted to them in the first place for an attempt at conciliation. The parties must appear before the Court in person, except in special cases, when they may be represented.

As regards their procedure, certain special rules varying from the ordinary practices of the higher Courts are applied to them; and it is enacted that they are to take account of well-established local customs which are not contrary to principles of equity and natural justice.

A special law defining more exactly the procedure before the Cantonal Courts has been issued in 1913.

**Advocates.**—Law No. 26 amends and consolidates the rules governing the Bar of the native Courts. To be inscribed on the roll of advocates the applicant must have a certificate of the Khedivial School of Law or a foreign diploma recognised as equivalent, or he must have served as a judge of the Native or Mixed Tribunals for not less than four years. Two years of “stage” are prescribed, during which the probationer may plead before the Markaz (District) and Summary Courts in their own names, and in the name of the advocate with whom they are reading before the Central Courts. Chapters 2 and 3 of the Law deal with the Rights and Obligations of the Advocates and the Discipline of the Order. Chapter 4 regulates the organisation of the Order, providing for a general assembly, meeting annually, which will elect a Council of fifteen, and a *bâtonnier* and his deputy. The Council nominates three members to represent it at each Central Tribunal. A member is delegated by it to the Central Council of Discipline of the Order, and to the local Councils of Discipline it appoints an advocate of the Court of Appeal. Questions touching the validity of the composition of the General Assembly and the Council of the Order will be brought before the Native Court of Appeal sitting as a Court of Cassation.

The rules as to the examination for a certificate of equivalence entitling those who have a foreign legal diploma to practise before the Native Courts, or hold office in them, are modified by Law No. 36.

**Peasant Proprietors.**—Law No. 29 is one of the various measures introduced with the object of bettering the conditions of the peasant proprietors. It sets up in each district (Markaz) a commission to investigate the indebtedness of the small agricultural proprietor. The commission is composed of two constables of the Markaz and the omdeh of the village, and its functions are to draw up a list of the holders of five feddans or less, and a table of all the debts upon their property.

**Homestead Law.**—Law No. 31 (which has already been partly considered under the title of Civil Law) contains articles which are intended to secure the exemption of the holdings of small proprietors from seizure for debt. The incorporation of these articles in a law simplifying the procedure of expropriation is a somewhat remarkable example of “tacking”; and it may be noted that the law under consideration only applies to cases which come within the purview of the Mixed Courts. The application of the rules to the Native Courts has been made by a later law which was not issued till 1913, and which contains certain modifications ascertained already to be required in the interests of financial security. This law declares that the agricultural holdings of farmers owning not more than five feddans cannot be seized for debt. The exemption extends to the dwelling-house, to two draft animals, and the agricultural implements necessary for the cultivation; and applies as well to the claims of mortgage creditors as to those secured by a pledge or right of affectation. This enactment, however, does not affect the rights of those creditors whose security was registered at the time the law came into force, nor of those unsecured creditors whose document of title obtained an official date before that time.

**Antiquities.**—Law No. 14 is a comprehensive measure for the regulation of the search for antiquities in Egypt, and of dealings in them. In the first article it declares that all antiquities found upon or in the soil throughout the territory of Egypt belong to the public domain of the State. The Government is empowered to remove any immovable antiquity from private property, or to expropriate the land on which it is found and preserve it there without having regard to the value of the antiquity in fixing the compensation to the owner, save by an addition to the purchase-price of 10 per cent. In the case both of movable and immovable antiquities, the finder must give notice immediately to the Government authorities. In the case of movables, the finder is to receive one-half of the objects found or of their value. A permit to search for antiquities must be obtained from the Ministry of Public Works; and a permit likewise must be obtained by every dealer in antiquities. The export of antiquities is permitted only if a special authorisation has been obtained from the Administration. Penalties of imprisonment up to one year and a fine are fixed for the violation of these provisions, and also for the mutilation or destruction of immovable antiquities; while a penalty of a week's imprisonment or a small fine may be imposed upon anybody who writes a name or inscription on such antiquities.

**Religious Communities.**—Law No. 3 modifies the constitution of the General Council of the Orthodox Copt community.

**Local Laws.**—Nos. 4, 5, 28, 37, 38. Law No. 33 raises the maximum of the borrowing powers of the Municipality of Alexandria to £E1,000,000.

**Police.**—Law No. 16 deals with the placing on half pay of police officers.

**Slaughter of Animals.**—Law No. 6 prohibits the slaughter of calves born in the country.

**Protection of Birds.**—Law No. 9 prohibits the shooting of a number of species of birds useful for agriculture.

**Protection of Cotton.**—Laws Nos. 13 and 27 amend the law on the destruction of cotton-worms. Law No. 19 prohibits the carriage of unginned cotton from Upper Egypt to Lower Egypt in order to secure the quality of the cotton of Lower Egypt.

**Infectious Diseases.**—Law No. 15 prescribes the notification of cases of infectious disease to the Sanitary Bureau in towns, and to the omdeh (headman) in the villages.

**Notification of Births and Deaths.**—Law No. 23 amends the practice as to the notification and registration of births and deaths.

**Education.**—Law No. 20 provides for the reorganisation of the technical school of agriculture, and Law No. 21 for the foundation of an intermediate agricultural school. Law No. 22 amends a law of 1911 regulating the Police School. Law No. 35 modifies the organisation of the Khedivial Training College. By a Khedivial Decree of December 20 the Khedivial School of Law is detached from the Ministry of Education and placed under the Ministry of Justice.

**Savings Banks.**—A Khedivial Decree of March 10 changes the rate of interest payable on deposits at the Post Office Savings Bank to 3 per cent.

**Local Authorities.**—A Khedivial Decree of November 28 amends the disciplinary powers of the Ministry of the Interior over omdehs and cheikhs.

**Post Office.**—A Khedivial Decree of December 16 alters the rates of the internal parcel post. A Decree of December 30 raises the amount which the Post Office may collect on account of goods delivered from 4,000 to 10,000 piasters.

**Railway and Telegraphs Administration.**—Law No. 40 detaches this administration from the Ministry of Public Works and attaches it to the Presidency of the Council of Ministers.

## 2. FRANCE.

[Contributed by M. RENÉ A. FAUX, *Avocat, Paris.*]

**Franco-German Convention.**—The Law of February 13, 1912, approves the convention made between France and Germany, November 4, 1911, for the delimitation of their respective possessions in Equatorial Africa.

**Sociétés de Crédit Immobilier.**—The Law of February 26, 1912, modifies

the Law of April 10, 1908, concerning small holdings ("petite propriété") and economic dwellings ("habitations à bon marché"), and abrogates Art. 4 of the Law of March 19, 1910, creating the "Crédit Agricole individuel à long terme" (individual loans to cultivators for protracted periods).

The new Article 2, s. 1, suppresses the distinction between "Sociétés régionales" and "Sociétés locales" of real property credit (crédit immobilier). After some years of experience it has been proved that it would be quite useless to maintain a distinction which no longer corresponds to the reality.

Art. 4 reduces from 200,000 to 100,000 francs the minimum capital necessary for the formation of "Sociétés de Crédit Immobilier."

**White Slave Traffic.**—The Law of April 6, 1912, on the White Slave Traffic, approving the International Convention signed in Paris, May 4, 1910, for the repression of what has become known as the "White Slave Traffic," by France, Germany, Austria, Belgium, Brazil, Denmark, Spain, Great Britain, Italy, Holland, Portugal, Russia, and Sweden.

**Affiliation.**—The Law of November 16, 1912, modifying Art. 340 of the Civil Code (Judicial Recognition of natural paternity).

Art. 1.—Extra-conjugal paternity can be judicially declared :

- (1) in cases of elopement or assault, when the time of the elopement or the assault corresponds with the time of the conception ;
- (2) in cases of seduction accomplished by the means of abuse of authority, promise of marriage or betrothal, and when there is some proof in writing within the terms of Art. 1347 ;
- (3) in cases where there exist letters or other documentary evidence in the handwriting of the supposed father, embodying an indisputable acknowledgment of paternity ;
- (4) in cases where the supposed father and the mother have openly lived together during the legal period of the conception ;
- (5) in cases where the supposed father has provided for or contributed towards the support and education of the child in his capacity as father.

The "action en reconnaissance de paternité" (suit for the determination of paternity) will not be receivable :

- (a) if it is proved that during the legal period of conception, the mother has lived a notoriously immoral life, or has had relations with another man ;
- (b) if the supposed father was during the same period either on account of absence or accident physically unable to be the father of the child.

Only the child can institute these proceedings. During the child's minority, the mother, even under age, is the only person entitled to commence them. They must be brought within two years of the date of the birth.

However, in the cases provided for by ss. 4 and 5, above mentioned, the

action may be brought within two years of the cessation of the cohabitation of the parents or of the supposed father's contributing to the support and education of the child.

In default of recognition of the child by the mother, or should she have died, "interdite" or absent, this action may be started in accordance with the regulations of Art. 389. If this action has not been commenced during the minority of the child, the latter will have the right to bring it at any time within the twelve months following his attaining his majority.

Considering the importance of the new Law, it may be well to trace the history of Art. 340.

The original Art. 340 forbade suits for determination of natural paternity. Whilst the child of an unmarried woman can generally identify his natural mother (Code Civil, Art. 341), this right is refused to him when it is a question of his father. There was an only exception to this rule in the case where the mother had absconded. The child had the right to bring proceedings against the man he had some reasons to believe to be his father, with a view to prove his filiation.

In the old times it was quite different. The question was governed by two rules, one enunciated by our old famous juriconsult Loysel: "*Qui fait l'enfant, doit le nourrir*"; the other by President Fabre: "*Creditur virgini parturienti.*"

To this latter were due numerous scandalous law-suits. This mode of evidence was too doubtful and created perpetual danger of blackmail.

The "Convention Nationale" by its decree of the 12th Brumaire, An II., entirely altered this legislation by placing children born out of wedlock and those whose parents were married on the same footing, and authorised natural children to obtain recognition of their paternity by basing their claim on written evidence or cohabitation only.

The Civil Code did not maintain these regulations, and forbade the suits for determination of natural paternity, except in the case of elopement. The reason for this change was the fear of scandal and the difficulty of obtaining evidence, and the "Convention" sacrificed the rights of the child to the desire not to trouble the peace of families.

Nearly all nations have adopted the suit for determination of natural paternity. Russia alone does not confer any right upon an illegitimate child. With this one exception, it may now be said that a father can be forced to more or less fulfil his duty anywhere by judicial means.

However, it is necessary to prevent blackmailing, and this is why Art. 3 of the new Law states that :

"S. 2 of Art. 400 of Code Pénal is completed by the following dispositions:

"The same penalty may be applied by the Civil Tribunal before which a claim in recognition of paternity is brought to the plaintiff guilty of untruthfulness."

The police supervision as regards prescribed area may likewise be pro-



nounced in such cases for a period of not less than five and not more than ten years.

The condemnation in costs and damages of a *mala fide* plaintiff would be quite insufficient. There is only one thing which can prevent dishonest people from starting a *mala fide* claim: the fear of punishment, and precisely with a view to make the repression rapid the Law has conferred upon the Civil Tribunal before which the claim is brought and which, of course, is in a better position than any other to appreciate the circumstances, the power to pronounce an adequate punishment without being obliged to refer the matter to a criminal Court.

Such is briefly the idea governing the Law of November 16, 1912.

**Criminal Procedure.**—Law of November 28, 1912, regulating the admission to bail of accused persons, modifies Art. 116, Code d'Instruction Criminelle (Criminal Procedure).

According to the original Art. 116, the admission to bail (*mise en liberté provisoire*) was impossible—

- (1) during the period included between the order of “*Renvoi*” of the committal for trial and the trial of the case at the Assizes ;
- (2) during the period which elapsed between the trial and the date of judgment being pronounced.

This situation was terrible ; during the course of the case it might happen that a supplementary inquiry was ordered by the Court. Still there was no jurisdiction competent to decide as to the admission to bail, and the accused, whose imprisonment seemed now quite useless, might be kept in prison during several months.

Art. 116, as modified, lays it down that “The accused can apply to the ‘*Chambre des Mises en Accusation*’ at any time for his admission to bail up to the date of his trial before the Assize Court. Should the latter order the affair to stand over to another sessions without deciding the admission to bail, or if the sentence has been annulled by the Court of Cassation (which involves a new trial before another Court of Assizes), the admission to bail can still be applied for before the ‘*Chambre des Mises en Accusation*’ which pronounced the committal.”

### 3. GERMANY.

[Contributed by ERNEST J. SCHUSTER, ESQ., LL.D. (*Munich*).]

The Imperial Laws enacted during the above-mentioned year contain nothing of general interest, and the only matter of importance deserving mention is the ratification of the two International Conventions relating respectively to the law of Husband and Wife, and to the law relating to Interdiction on the ground of unsoundness of mind or on other grounds. Both Conventions were entered upon at the Hague in 1905, and it is

somewhat curious that seven years elapsed before they were ratified. Both Conventions have been ratified in Germany, France, Italy, the Netherlands, Portugal, and Roumania; the one on the Law of Husband and Wife also by Sweden, and the one on Interdiction also by Hungary. A summary of the contents of each Convention is given below.<sup>1</sup>

**Convention on the Law of Husband and Wife.**—As regards the general mutual duties of the spouse (duties as to cohabitation, husband's rights of control, wife's powers of agency, mutual rights as to maintenance, etc.) the law of the State of which the spouses are subjects is conclusive, but the methods of enforcement must be adapted to the law of the State in which enforcement is sought for.

As regards the effects of marriage on property the following rules apply :

(a) *Marriage Contracts.*—The *capacity* of each of the parties for entering upon an antenuptial marriage contract is determined by the law of the State of which such party is a subject immediately before the solemnisation of the marriage. As regards postnuptial contracts, the question of capacity is not dealt with by the Convention.

The *formal* requirements of an antenuptial or postnuptial marriage contract are on principle sufficiently complied with if the form of execution conforms to the law of the place of execution, or to the law of the State or States of which the contracting parties are subject, but if either of the parties is the subject of a State of which the law, even as regards contracts executed outside of its territory, requires a special form, the contract is invalid unless that form is observed. It will thus be seen that the rule *locus regit actum* is made subject to a very important restriction.

The *validity and effect* of a marriage contract are in the case of an antenuptial contract determined by the law of the State of which the husband is a subject at the date of the marriage, and in the case of a postnuptial contract by the law of the State of which the spouses are subjects at the date of the contract.

The question whether a postnuptial contract can at all be entered into, and whether the matrimonial régime established by antenuptial contract, or by reason of the absence of such a contract can be modified by postnuptial contract, depends on the law of the State of which the spouses are subjects at the time when the modifying contract is intended to be entered upon. (Illustration: under French law the matrimonial régime established by antenuptial contract, or by reason of the absence of an antenuptial contract, cannot be modified by postnuptial contract, but if a person who was a Frenchman at the date of his marriage becomes a German subject after

<sup>1</sup> Four International Conventions are in force in addition to those referred to above. They deal with the following matters: (1) Marriage; (2) Divorce; (3) Guardianship; (4) Civil Procedure.

his marriage the matrimonial régime may be modified by postnuptial contract in accordance with the rules of German law.)

The modification of the matrimonial régime by postnuptial contract cannot in any case affect the rights of third parties acquired before such modification was effected.

Each State being a member of the Convention may prescribe formalities (e.g. registration) for the purpose of making the rights acquired by a spouse by virtue of the matrimonial régime effective as against third parties. Special rules may also be enacted by each such State for the purpose of protecting persons having dealings with a married woman carrying on a trade within such State.

(b) *Matrimonial régime in the absence of a Marriage Contract.*—Where no marriage contract is entered upon the effect of the marriage on the property of both spouses is determined by the law of the State of which the husband is a subject at the date of the marriage. This rule applies on principle to immovable as well as to movable property wherever situate, but exception is made as regards immovable property situate in a country within which special rules are applied to immovables; the effect of marriage on any such immovables is determined by the *lex situs* without regard to the husband's nationality.

A change in the nationality of the spouses does not in itself effect any change in respect of the matrimonial régime, but, as shown above sub (a), such change of nationality may enable the spouses to effect a change by postnuptial contract. (In the well-known case of *De Nicols v. Curlier*, 1900, A.C. 21, the question whether spouses who at the time of their marriage were domiciled subjects of a State in which the régime established on marriage is immutable, can modify that régime by subsequent contract if after their marriage they establish a domicile in England, was left undecided, but the method in which this question is dealt with by a Convention to which France itself is a party would possibly remove the doubt if such a question were to arise again in this country.)

**Convention relating to Interdiction.**—On principle interdiction (that is to say, an order of a competent Court by reason of which the interdicted person loses or suffers a restriction in his or her capacity to enter into legal transactions) cannot be effected except under the law and by a Court of the State of which the person concerned is a subject, but this principle is in certain events departed from in the following manner: provisional measures for the protection of the person or property of the person concerned may in all cases be taken in the country in which such person resides for the time being. Where interdiction appears to be necessary, the competent authorities of the State in which the person concerned resides have to give notice to the competent authorities of the State of which such person is a subject. If in such a case the last-mentioned authorities do not take the required steps within a prescribed period the interdiction may be effected in the country in

which the person concerned resides for the time being, but in that event the order cannot be made except on grounds recognised in the country of residence. The *effect* of the interdiction is, however, determined by the law of the place in which the order is made.

#### 4. RUSSIA.

[*Contributed by L. P. RASTORGUEFF, ESQ., of the Russian Bar.*]

The following laws of general interest have been passed :

**The Law of June 15, 1912, on the Re-organisation of Local Justice.**—

The emancipation of the serfs in 1861 was followed by a radical reform of the Russian courts. The Judicature Law of 1864 created Justices of the Peace for the administration of local justice. The office was filled by triennial election and was not confined to one class. Any person belonging to the locality was eligible, provided that he had the necessary qualifications in regard to education, legal training, and the possession of property. Within the jurisdiction of Justices of the Peace came civil cases involving amounts not exceeding 500 roubles, and criminal offences punishable by imprisonment not exceeding eighteen months.

As regards the peasants, the administration of justice was entrusted to their own Courts, which were constituted of three judges elected by the peasants of each locality from among themselves. These Courts tried small offences committed by peasants and civil disputes among them respecting matters not exceeding 300 roubles, and were not bound by the written law, but were guided, in deciding them, chiefly by legal usage.

Although the Justices of the Peace succeeded in gaining public confidence, they were abolished by the government of Alexander III., and superseded in 1889 by nominated judges in the towns, and by chiefs of the peasants (*Zemsky Natchailnik*) appointed from among the local noblemen in the country. The jurisdiction both of town judges and of chiefs of peasants was reduced in civil matters to cases not exceeding 300 roubles in value, and in criminal matters to cases punishable by imprisonment for not more than twelve months; but in addition to their judicial functions the chiefs of peasants were entrusted with administrative power over the local peasantry. The desire which had animated the Justices of the Peace was the administration of the law with equality and justice for the whole population; while that by which this new body was guided was rather the creation of a strong power in the village—an attempt to return, in fact, to something resembling the old conditions of feudalism.

The new Law of 1912, in restoring the office of Justice of the Peace, goes

back to the principles of 1864, by creating an elective democratic body solely for the administration of justice.

There is, however, a new feature which did not exist in the old Law, namely, that to the persons ineligible to serve on the local Bench, such as criminals, bankrupts, etc., are added Jews (Art. 21).

The jurisdiction is enlarged; in civil matters the Justices may try cases relating to rights in either movable or immovable property valued at not more than 1,000 roubles (Art. 29, Code of Civil Procedure), while in criminal matters their jurisdiction extends to all offences punishable by imprisonment—not carrying with it deprivation of rights (Art. 33, Code of Criminal Procedure).

An innovation is introduced by the new Law into criminal procedure. A Justice of the Peace, dealing with offences punishable either by a fine not exceeding 50 roubles or by imprisonment for a period of fifteen days or less, may inflict the punishment without trial if he is satisfied from the report of the police or other officials that there is no doubt the offence was committed. The decree must be made at a public sitting, to which the judge is not bound to summon the accused person; but should the offender appear he may offer an explanation of his action. A decree must at once be communicated to the accused, who within seven days may demand a trial; if the trial is not demanded within that time, the decree takes effect as a final judgment (Art. 180[9]—180[14], Code of Criminal Procedure).

The Justices of the Peace receive salaries amounting to about £300 a year.

The Peasants' Courts are also reformed by the new Law. They will now consist of three judges, one of whom is the President, elected by the peasants from among the peasant heads of families and confirmed by the Assembly of the Justices of the Peace of the district. They must have attained thirty years of age and be literate. Jews and foreigners are ineligible (Arts. 4, 5 and 8). The President receives a salary of about £48, and the Judges about £12 each per annum (Art. 15). The Secretary of the Court, whose salary is about £36 a year, is appointed and may be dismissed by the Justice of the Peace of the district (Art. 24). Litigation in the Peasants' Courts is exempt from court fees. Within their jurisdiction come (a) civil cases the parties to which are peasants (1) relating to movable property of not exceeding 100 roubles value; (2) relating to communal property; and (3) inheritance and partition of fixtures on allotments of deceased peasants in unlimited sums and other movable property not fixtures under 500 roubles in value; (b) petty criminal offences committed by peasants punishable by arrest not exceeding one month or by fine up to 100 roubles (Arts. 54, 59). By consent of parties to the suit the above civil actions may be brought before a Justice of the Peace (Art. 56). Trial in the Peasants' Court is conducted orally and in open court; the Court in deciding cases is guided by local usage and not by law (Arts. 68, 76). Appeal from judgments given in the Peasants' Court can be brought to the

High Peasants' Court (Arts. 82, 87). The High Peasants' Court consists of a local Justice of the Peace as its President, and of not less than two Presidents of Peasants' Courts; the President of the Court from which the appeal is brought not being qualified to sit (Arts. 30, 31, 33). From the judgments of the High Peasants' Court, Cassation Appeals may be brought before the Assembly of Justices of Peace of the district (Art. 92). The local Justices of Peace and the Assembly of Justices of Peace exercise disciplinary power over the judges of the Peasants' Courts, who may be punished by them not only for improper performance of their duties, but also for behaviour incompatible with the dignity of judges. The disciplinary punishments which may be inflicted on them are warning, admonition, fine not exceeding 15 roubles, and dismissal. The delinquent is only able to appeal from the last to the High Courts of Justice, but the Public Prosecutor may appeal from all disciplinary judgments (Arts. 41-52). The new Law is to come into force, at first only in ten provinces. Afterwards it will be extended gradually throughout the Empire.

**The Law of June 23, 1912, on Military Service.**—Some modifications are introduced by this law into the regulations as to the age of recruits, duration of service, privileges entitling to exemption from short service, punishments for evasion of service, etc. According to the new Law young men are called to military service when they have attained their twentieth year before the January of the year in which they are recruited (Art. 2). The duration of service is fixed (1) for infantry and artillery (except horse artillery) at eighteen years, of which three are in actual service and fifteen in the reserve; (2) for other branches of the army seventeen years, of which four are in actual service and thirteen in the reserve; (3) for the navy ten years, of which five years are passed in actual service and five in the reserve (Arts. 7, 10).

The minimum stature of soldiers admitted is 2 arshines and  $2\frac{1}{2}$  vershok (about 5 ft.) (Art. 17). Persons who are incapable of military service because of ill-health or physical defects are exempt, except when some voluntary mutilation has been inflicted for purposes of evasion, in which case they are obliged to serve even if unable to carry arms (Art. 15).

Men whose support is necessary to their families are privileged under four classes; the first class—only son, only member of family capable of work, etc.—are entirely exempted from military service, but all the other classes may be called upon to serve if the number of unprivileged recruits should be insufficient (Arts. 18-24). Any person enjoying such privileges is deprived of them if his parents declare that he is not supporting them (Art. 25). Voluntary substitution for a brother is accepted (Art. 28). Education also brings certain privileges: members of universities and other higher institutions are granted a period of grace, the maximum extension being to twenty-eight years of age (Art. 30). Holders of diplomas also enjoy a shortened period of military service, namely, three years of actual service in all branches, and in special cases two (Arts. 37, 45). Clergy of all

denominations, Academicians, professors, University readers, artists sent abroad to study by their academy or school are exempted from military service (Art. 46).

The new Law contains special provisions with regard to persons of Jewish persuasion. The Minister of the Interior is now empowered to determine, among the number of men liable each year for military service, what proportion of those required shall be of the Jewish faith (Art. 83), and if the number of Jews of the unprivileged class is not sufficient, those who by their circumstances belong to the privileged classes are compelled to serve, even those of the first class (*i.e.* entirely exempt) (Art. 24). The privilege of substitution for a brother is also denied to Jews.

Under the new Law the punishment for evasion of military service is considerably increased and varies according to the particular circumstances. The usual punishment is imprisonment from one to two or two-and-a-half years, and if the delinquent is caught before he reaches the age of thirty-four he is obliged to carry out his service.

**Law of June 23, 1912, on Provision for Workmen in Sickness.**—This Law places workmen in a somewhat better position as regards receiving medical attendance and sick allowance in illness. Medical attendance is provided at the expense of the employers; and sick allowance from a fund for the purpose (Arts. 8 and 9). Those entitled to assistance are workmen and employees without distinction of age or sex engaged in enterprises where machines are employed (except State enterprises and public railways), and hands up to the number of twenty; and workmen and employees in enterprises which employ thirty hands but no machinery (Arts. 1-5). Employers are bound to supply not only ambulance but hospital treatment, medicines, and doctors' attendance, up to four months' illness (Arts. 44-52). Sick funds must be established in connection with each enterprise having as many as 200 workmen and employees; but smaller enterprises may join together for this purpose and have a fund in common. Membership, both for workmen and employers, is compulsory; the contribution of the former being fixed at from 1 to 3 per cent. of their wages, while that of the employer must equal two-thirds of the whole amount paid by the workmen (Arts. 17-41, 64-84). Allowances are given in three cases: illness or injury depriving of capacity to work—commencing from the fourth day until recovery, but never for longer than twenty-six weeks;—maternity; death. In cases of injury only those receive it (on the same basis) who are not insured against accident; those who are insured receiving the allowance for not more than thirteen weeks from the date of the injury, after which they are compensated by the insurance societies, the contributors to which are all employers. The amount of allowance for sickness or injury varies according to the circumstances, being equal to from a quarter to two-thirds of the wages. In case of death it amounts to from twenty to thirty days' wages. For maternity the amount is fixed from half to full wages, and is given two

weeks before and four weeks after the birth of the child. An employer allowing the mother to begin work earlier than four weeks after is punishable by a fine not exceeding 100 roubles, or arrest for one month, and the mother is deprived of her allowance. To be entitled to the maternity allowance a woman must have been a member of the fund for three months. The families of members of the sick funds may also participate in the benefits, but not more than one-third of the contributions may be so used (Arts. 53-63). The administration of the affairs of the sick fund is in the hands of a general assembly of the members and its executive council, the assembly being composed of representatives of workmen to the number of one hundred and representatives of employers; the chairman must be an employer. Notice of meetings must be sent to the police, who send an officer who has the right to warn and then close the meeting. General control over the whole system is exercised by local officials, who compose a board in which two representatives each from workmen and employers are included (Arts. 85-115).

**Law of June 23, 1912, on Insurance of Workmen against Accident.**—

This Law includes in its scope the same categories of workmen as the Law on sick benefit (Arts. 1-6). The employers, on whom falls the expense, form insurance associations, to which they pay annual contributions (Arts. 7-9). The beneficiaries are the workmen and employees who are incapacitated through accident incurred in their work (Art. 13). The amount of compensation is fixed, in cases of complete incapacity, at a year's wages, and if it is partial the amount is proportionately diminished (Art. 21), the money being paid in the form of periodical allowances, which may be capitalised and paid in a lump sum only if the yearly allowance is less than 36 roubles (Arts. 17-35). Medical examination may be demanded either by the insurance association or by the person insured not oftener than once a year during the three years following the grant of compensation (Art. 65) for the purpose of re-adjusting the amount.

The two Laws above cited will benefit about two millions of workmen, that is to say, about one-quarter of the whole of the workers in Russia, or 17 per cent. of the whole population.

**Law of June 3, 1912, on Women's Inheritance.**—Under the former Law a daughter, where there were also one or more sons, inherited only one-fourteenth of the immovable and one-eighth of the movable property left by the parents dying intestate, and had no right of inheritance to property left by a brother or sister dying intestate if a brother also survived.

The new Law equalises the rights of sons and daughters in the first case and of brothers and sisters in the second, inheritances being divided among them in equal share, except in the case of rural land, of which each daughter if there are sons, or each sister if there are brothers, has the right only to a seventh part (Arts. 1128-35, Civil Code). The share of a surviving spouse, either male or female, is also a seventh part (1148, *ib.*).



**Law of June 23, 1912, on Building Rights.**—By the old Law, land could be leased for a period not exceeding thirty-six years.

The objects of the new Law are to prolong the period of lease for building purposes, which is now fixed at ninety-nine years (the idea of the creation of perpetual rights was rejected), and to give to the owners of buildings a real right in the plot on which they are erected (Art. 3). The owner of the building right may dispose of it by will or by contract; it may be alienated voluntarily or compulsorily, mortgaged, etc. (Art. 2).

The tenant is bound to erect the buildings within the time specified by the contract, and to pay to the landlord a fixed rent, personal service in lieu thereof being prohibited (Arts. 13, 14, 26). Building rights are extinguished by expiration of the term, and by merger (Art. 18). After expiration of the term of the contract the tenant may remove his buildings within the period fixed by law; the landlord, however, may retain the buildings by compensating the tenant (Arts. 19, 22).

**Law of June 28, 1912, on Compulsory Alienation of Patents**—Patents for inventions regarded as necessary for the State may be compulsorily alienated by a special ukase issued in each case (Arts. 1-7). If no agreement has been arrived at in regard to indemnification, it is fixed either by a Special Commission or by the Court (Arts. 6, 8, 12).

## 5. UNITED STATES OF AMERICA—FEDERAL AND STATE LEGISLATION.

[Contributed by R. NEWTON CRANE, ESQ.]

The Federal Legislation by the United States Congress has embraced a variety of subjects, among the most important of which are the following:

**A Children's Bureau** was created as an adjunct of the Department of Commerce and Labour. The Bureau is directed to investigate all matters pertaining to the welfare of children and child-life among all classes, and especially infant mortality; the birth rate; juvenile courts; desertion by parents; dangerous occupations; diseases and accidents; care of the mother prior to and immediately after child-birth, and the nurture of the offspring. It is stated that the Act, which took immediate effect, has already been of great practical benefit, particularly in giving much-needed instruction to ignorant mothers both as to the care of themselves and in looking after their infants.

**A Commission on Industrial Relations** was established to consist of nine persons, three of whom must be employers of labour and three representatives of organised labour. The Commission is empowered to hold sittings and public hearings in any place in the United States; to compel the attendance of witnesses; to investigate the conditions of labour in the principal industries, the sanitation of workplaces and the safety of employees; to consider the growth of associations of employers and of wage-earners, and

their effect respectively upon the relations between employers and employees; to study the consequences of collective bargaining for wages and pay and terms of service, and also the various methods of maintaining satisfactory relations between masters and servants, and avoiding and adjusting labour disputes. The Commission is to seek to discover the underlying cause of dissatisfaction in the industrial situation throughout the country, and to report from time to time to Congress the results of its labours.

No less than eight States, viz. Oregon, Washington, California, Colorado, Minnesota, Wisconsin, Nebraska, and Massachusetts, have similar State Commissions with the like, or even more extensive, powers. The Oregon Commission has established a minimum wage for women, in the City of Portland, of 4s. a day for girls between the ages of sixteen and eighteen in both manufacturing and mercantile establishments. Another ruling provides that no adult woman may work in a factory at a less weekly wage than 35s., or in a mercantile establishment at less than 39s. a week, which is named as the least amount sufficient to "supply the cost of living to such woman." The order has the legal effect of a law, and can be varied only by appeal to the Circuit or Supreme Court of the State. In all of the other seven States having a like Commission, except Wisconsin, the Commission is composed of three members appointed by the Governor—one representing the interests of labour, one the employing class, and the third the general public. The powers of the Commission, generally speaking, are the same as those of the Oregon Commission, except that in Massachusetts and Nebraska the wage boards have not the backing of the law in enforcing their rules. Instead, they are allowed to publish in the newspapers the names of the delinquent employers, and the force of public opinion is relied upon to bring the employers to terms.

**The Pension List** was further enlarged by granting pensions to practically all enlisted men and officers, of the army and navy, who served in the civil war between the North and South, and in the war of 1846-8 with Mexico. The pension amounts to a dollar or 4s. a day, and involves an additional expenditure of £5,000,000 annually.

**A Parcels Post** was introduced for the first time in the United States, the service of this kind having hitherto been performed by private Express Companies. As the area of the country is so extensive it is divided by the Act into zones, and the rates are fixed for the zones and between the respective zones.

**The Term of Enlistment** in the army has been fixed at seven years, four years with the colours and three years in a proposed army reserve which has been newly created by the Act.

**Radio or Wireless Telegraph** regulations were embodied in an Act which prevents, under heavy penalties, interference with messages; provides for standard length of sending and receiving waves; for the use of a fixed distress wave and distress signals; for the right of way of such signals over

commercial or other messages; and requires shore stations to be always prepared to receive distress calls, and operators to look out for calls of this character at fixed intervals of time.

**State Legislation.**—The volume of State legislation was very small, and the character of it comparatively unimportant, as only a few of the State legislatures met in 1912. A significant insight into the trend of feeling with respect to State legislation in the Western States is afforded by the new laws adopted by the legislature of Arizona at its first session, this new State having been admitted into the Union only on February 14, 1912. Acts were passed prohibiting foreign corporations from removing causes to the Federal Courts; limiting the number of coaches in a railway train; requiring experienced drivers and guards for all trains; making void contracts in advance between an employer and an employee for the settlement of suits for damages for personal injuries; prohibiting the blacklisting of workmen; regulating child labour; providing for the punishment of desertion of a wife or a child; establishing indeterminate sentences for nearly all criminal offences; prohibiting the employment of teachers affected with tuberculosis in board schools; denying to corporations the right to contribute to political campaign funds; forbidding State officials to use, and the railways to issue, free passes; establishing compulsory workmen's compensation; establishing an inheritance tax of 1 per cent. to descendants, 2 per cent. to collaterals, and of from 3 to 6 per cent., depending upon the amounts, to all others; requiring the publication of campaign contributions and expenditures both before and after an election; and establishing stringent pure-food regulations.

**Referendum.**—California and Louisiana have provided for the referendum, and the former also for the initiative, by the people of the State, so that any law passed by the legislature before it goes into effect must, if so desired, be submitted to a vote by the people. In the case of the initiative the people may, by a vote at large, require the legislature to pass an Act to carry out an indicated measure.

**The Commission Form of Government** by which municipalities are governed, to the exclusion of mayors and aldermen or councilmen, by a commission of three or five members possessing arbitrary power, and subject only to the control of the people, is growing in popularity. In Louisiana permission for this form of government was given, with the added power of the initiative, referendum, and recall of elected officers, to the city of New Orleans, which is one of the largest cities in the United States to be so governed. In Mississippi all cities may place themselves under a commission, but in South Carolina it is restricted to cities of not more than 100,000 population.

**Eugenic Legislation.**—In nearly all of the States there are now statutes which tend to protect the health of the people and to secure the highest development of the race. New Jersey has made additional requirements with regard to marriages by the elimination of certain persons from the list of those who have heretofore been authorised to solemnise marriages, and

providing strict inquiry in regard to the identity and condition and circumstances of those applying for licences to marry. In Louisiana municipalities are authorised to refuse permits to build houses for the occupancy of negroes in white communities, and *vice versa*, while in Virginia the authorities may designate in cities and towns segregated districts for the residence of white and coloured persons respectively. In California persons addicted to the intemperate use of narcotics or stimulants so as to have lost the power of self-control may be kept in confinement. In Kentucky and Maryland the legislature has forbidden the use of common drinking cups in public places. In New Mexico provision has been made for a commission to study the effect of alcoholic drink upon the human system.

**Law and Procedure.**—In Massachusetts, Louisiana, and Rhode Island banks are freed from liability to a depositor, or drawer of a negotiable instrument, for the payment upon a forged endorsement, unless within one year after the return of the paid cheques or other negotiable instruments to the depositor he notifies the bank in writing of the forgery. Louisiana, disregarding the rule that a marriage is valid if valid where it was celebrated, has passed an Act providing that marriages contracted between persons one or both of whom are domiciled in Louisiana, and forbidden to marry in that State, shall not be there deemed valid because contracted elsewhere, and valid where contracted. Massachusetts has shortened and simplified the forms of deeds, mortgages, and other instruments relating to real property. The same State has amended its inheritance tax law so that now only the real estate of a deceased non-resident is subjected to taxation, and has increased the amount recoverable from a railway company for death through negligence from £1,000 to £2,000. Mississippi requires newspapers and periodicals published in the State to print the names of their editors at the top of the editorial page. The same State makes proof of personal injury inflicted by a railway company *prima facie* evidence of want of reasonable skill and care, and, also, that the licence of any insurance company shall be revoked on failure to pay the amount of a final judgment within ninety days. It further permits a verdict by nine or more jurors in a civil action. In South Carolina the death penalty is now execution by electrocution.

**Female and Child Labour.**—In Kentucky no female under twenty-one may be employed or permitted to work at any gainful occupation, except domestic service or nursing, more than sixty hours in any one week, or ten hours in any one day. In Mississippi no girl under the age of twelve shall be employed in mills or factories, and no boy under sixteen, or female under eighteen, shall work therein more than eight hours a day or forty-eight hours a week, or at night. In Rhode Island the factory inspection laws have been so amended as to prohibit the employment of any person under twenty-one as messengers for telegraph, telephone, and messenger companies before 5 a.m. or after 10 p.m. In South Carolina in cities of over 5,000 population no child under fourteen may be employed as a telegraph or other public

messenger, or person under eighteen during the night. In Virginia no female or child under fourteen may work as an operative in any manufacturing establishment more than ten hours a day. In New Jersey children under sixteen are forbidden to work at night.

**“Tipping.”**—A novel Act has been passed by the legislature of Mississippi which prohibits hotels, restaurants, cafés, dining-cars, and railway and sleeping-car companies from allowing “tips” to be given to employees, all persons from giving the same, employees from receiving them.

# BRITISH EMPIRE.

## I. BRITISH ISLES.

### 1. UNITED KINGDOM.

Twenty Public General Acts and 146 Local and Personal Acts received the royal assent during the year, but the session was not completed until March 1913, so that the remainder of the legislation awaits consideration in the review of the year 1913.

**Army.**—The amendments effected by the annual Army Act (c. 5, U.K.) are to raise the amount payable by a soldier for the support of his bastard child, to simplify the procedure upon the surrender of deserters, to make the Geneva Convention applicable to persons employed on service in the United Kingdom, to modify certain details so as to facilitate the adoption of the Act in India and the Dominions, and to increase the payments for billeting.

**Coal Mines.**—A general strike of miners throughout the United Kingdom in the spring of 1912 led to the passing of the Minimum Wage Act (c. 2, E. & S.), with the object of securing to every efficient workman a wage at a rate not less than an amount fixed by a district board. Any body of persons fairly representing the miners and employers may be recognised by the board, and in default of agreement between them the board may make the appointment. Owing to the circumstances under which the Act was passed only two weeks were allowed for the constitution and approval of the joint district boards, and within another the rate of wages had to be fixed unless the board agreed to extend the period. The Act remains in force for three years "and no longer, unless Parliament shall otherwise determine."

**Criminal Law.**—Powers sought by the police for the suppression of what is known as the "White Slave traffic" are embodied in c. 20 (U.K.), amending the Criminal Law Amendment Act, 1885. Whipping is authorised as a punishment for procurers, and the penalties increased with a view to the suppression of brothels.

**Finance.**—Several statutes besides the usual finance measures are primarily concerned with the disposal of money. C. 4 raises the limit of rate which can be levied for the purposes of the Metropolitan Police. A novel item in the Finance Act (c. 8, U.K.) is the exemption from duty of tobacco grown within the United Kingdom "for the sole purpose of obtaining an extract

therefrom to be used . . . in the manufacture of insecticides or sheepwash, or for other purely agricultural or horticultural purposes." C. 9 is the annual statute relating to the customs of the Isle of Man. C. 12 reduces the rate of contribution to be made to the Superannuation Fund by elementary school teachers.

**Light Railways.**—C. 19 (E. & S.) amends the principal Act of 1896 so as to extend its use especially with a view to assisting the interests of agriculture and fishing and other forms of trade. It also enables legislation relating to the "trackless trolley" system to be dealt with by the Light Railway Commissioners.

**London Institution.**—The Government having arranged to acquire the London Institution, an Act of Parliament (c. 13) was necessary to provide for the transfer to the Commissioners of Works. The London Institution was established by Royal Charter in 1807 "for the advancement of literature and the diffusion of useful knowledge." It was described by the Lord Chancellor in introducing the bill as "one of those organisations which belonged rather to the Victorian period than that of to-day, and which was founded for the purpose of providing for subscribers lectures, a library and reading rooms, and means for study." In 1909 a Committee had reported in favour of founding a school devoted exclusively to the study of Oriental languages. The building of the London Institution was considered to be suitable for the purpose, and the shareholders agreed to dispose of it subject to arrangements for giving existing members access to it. The Act embodies the agreement of the financial terms made between the Government and the subscribers.

**Marriage.**—C. 15 (U.K.) is an Act to remove doubts as to the validity of certain marriages solemnised in Japan between 1889 and 1894.

**Seal Fisheries Convention.**—An Act (c. 10) gives effect to the Convention between the United States, Japan, Russia and the United Kingdom to prohibit pelagic sealing in which the hunting of sea otter is included. It prohibits, therefore, the use of ports for the equipment of ships to be engaged in fishing and the importation of the skins of seals other than those officially certified by the contracting parties.

**Shops Act.**—C. 3 (U.K.) is merely a consolidating measure embodying the provisions of the six separate Acts dealing with the hours of labour and other conditions of work in shops. It was passed through all its stages in the House of Commons in a few minutes.

**India.**—The preamble to the Government of India Act (c. 6) recites that a Governor of Bengal has been appointed, that a new province of Bihar and Orissa has been constituted, and that the province of Assam has been taken under the immediate authority and management of the Governor-General. The Act makes the consequential amendments necessary in the Indian Councils Acts, 1861 to 1909.

**Scotland.**—An Act (c. 14) assimilates the law of Scotland for the pro-

tection of animals to that of England, which received the royal assent in 1911.<sup>1</sup> Another Act (c. 16) authorises the extension of the Royal Scottish Museum at Edinburgh.

## 2. THE ISLE OF MAN.

Acts passed—11.

The legislation of the year includes an act adopting the Copyright Act, 1911, in the island, and an Act dealing with the detection of the adulteration of food upon the lines of the English Acts.

## 3. JERSEY.

[*Contributed by E. T. NICOLLE, Esq.*]

A new law on Elementary Education was passed by the States of Jersey and confirmed by Order-in-Council of December 16, 1912.

Elementary education has been for some years compulsory and gratuitous. By the new law the general supervision of all elementary schools in the island, as well as their management and administration, are vested in a Committee of the States, assisted by a school council in each parish. These councils have, however, little power.

As from February 1, 1913, all grants hitherto paid to elementary schools cease and the States take over all the parish schools, and all private schools hitherto subsidised, provided the managers of such schools make an application to that effect to the Committee of the States within one month from the promulgation of the law. The managers of private schools may reserve to themselves the right of making use of the school on Sundays and on week-days outside school hours, and the States bind themselves to keep the fabrics of the schools in repair.

The States are responsible for the cost of secular education, and for that of the religious instruction given by the teachers, which is limited to the reading and explanation of the Old and New Testaments. No catechism, formulary, or ceremony distinctive of any religious doctrine or denomination may be taught or employed by the teachers; but extended religious instruction may be given by the ministers of religion of any denomination or by persons appointed by them (who have the right of entry to the schools), provided that the parents so desire it. The teachers are not to be employed, however, by any denomination for that purpose.

The teachers are not to be required to subscribe to any religious belief or to belong to any particular denomination, or to attend or abstain from attending a Sunday school or any place of worship. No child can be required to attend any religious observance or instruction.

<sup>1</sup> C. 27. See *Journal of Comparative Legislation*, vol. xiii. p. 312.



The States Committee appoints and dismisses the teachers, and the Committee fulfils all the duties of managers.

The parish councils consist of the mayor as president, and of a certain number of ratepayers elected every three years. The managers of a private school which has come within the scheme may appoint an additional member to sit on the parish council, and the States Committee has the power to appoint three additional members of these councils, these latter to be persons conversant with educational questions and particularly with the educational requirements of the parish.

When a vacancy in the teaching staff of a school occurs, the States Committee is to confer with the parish council before making an appointment. If, at the conference, the school is one which has been transferred to the States and the additional member of the council (appointed by the late managers) objects on substantial grounds to the nomination of the teacher designated by the States Committee, the Committee will hold an inquiry at which the parents of the children attending the school may present their objections to the proposed nomination, and if the Committee be satisfied that the appointment would be objectionable to a majority of the parents, the Committee will then proceed to another nomination.

The school age is fixed from six to fourteen years.

It may be stated that all the managers of all the private elementary schools in the island have elected to come into the scheme, and thus all the elementary schools of the island are now under the administration of and maintained by the States of Jersey.

#### 4. GUERNSEY.

One Order-in-Council, relating to the charges upon vessels in the harbours of the island, was made during the year. The Ordonnances of the Royal Court have dealt amongst other matters with the notification of tuberculosis, local taxation, bovine tuberculosis, foot and mouth disease, pilots, the importation of horses, and military affairs. An Ordonnance of some interest is one rendered necessary by the increased use of motors. It imposes penalties for the non-observance of the rules of the road, and requires the driver of a motor to get out and remain standing as long as the person in charge of any frightened animal may require him to do so.

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## II. BRITISH INDIA.

[Contributed by SIR COURTENAY ILBERT, G.C.B.]

## I. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—13.

**Stamps.**—The Indian Stamp Amendment Act (No. 1) increases the stamp duty on small bills of exchange and promissory notes. The reduction effected by the Act of 1910 had not worked satisfactorily.

**Co-operative Societies.**—The Co-operative Societies Act (No. 2) repeals the Co-operative Credit Societies Act of 1904,<sup>1</sup> and extends the provisions of that Act to all kinds of co-operative associations, not merely credit societies but also associations for purposes of production, consumption, insurance of cattle and so forth. It also abolishes the distinction between rural and urban societies, relaxes the restrictions previously imposed on the distribution of profits in unlimited societies, and recognises unions of societies. It is hoped that the Act will further promote a movement which has already made great strides in India and from which valuable results may be expected.<sup>2</sup>

**Post Office.**—The Indian Post Office Amendment Act (No. 3), which amends the Post Office Act of 1898, gives the Post Office authorities power to open newspapers and sample and book packets suspected to contain indecent literature, and extends the power to search for such articles when imported. Other provisions of the Act are aimed at the prevention of frauds in connection with value-payable articles, the prevention of transmission by post of lottery circulars, and the regulation of the transmission of bullion and coin.

**Lunacy.**—The Indian Lunacy Act (No. 4) consolidates, with minor amendments, the previous enactments on this subject, which were numerous and to a great extent out of date.<sup>3</sup>

**Provident Insurance Societies.**—The Provident Insurance Societies Act (No. 5) has not such a wide scope as the English Friendly Societies Act, for friendly societies of the familiar English type do not appear to exist in India. The Act is aimed specially at unsound societies of the type known as “*dividing* societies,” and goes further in the direction of State control than the English law. All Provident Insurance Societies in British India must register themselves and supply copies of their rules to the Registrar. Where the Registrar is of opinion that there is ground for inquiry as to whether the

<sup>1</sup> No. 10 of 1904. See *Legislation of the Empire*, vol. iii. p. 23.

<sup>2</sup> On the progress of the co-operative movement in India, see the last (fifth) Decennial Moral and Material Progress Report, pp. 249 *et seq.*

<sup>3</sup> See the fifth Decennial Moral and Material Progress Report, p. 71.

business of a society is conducted fraudulently or not in accordance with the rules, he may direct the holding of an inquiry by an actuary, and, if the report is unsatisfactory, may direct the dissolution of the society. The Act also prohibits the receipt by insurance societies of premiums for insuring against the death of any person other than the actual payer of the premium or a near relative. Other provisions of the Act are aimed at securing publicity of accounts.<sup>1</sup>

**Life Assurance.**—The Indian Life Assurance Companies Act (No. 6) was a twin measure with the Provident Insurance Societies Act, and is of wider scope. The necessity for legislation on the subject was brought to the attention of the Government by scandals in connection with some mushroom companies and societies which broke down and through which a great many people lost their money. The Government had to consider the alternatives: either legislation involving much State control, as in certain continental countries, or legislation as in the United Kingdom, which is based on the principle of a minimum of State control and a maximum of publicity. They adopted the latter alternative, but the amount of State control is, as was natural, somewhat greater than in the United Kingdom. Power is given to the Government to apply for the winding up of an insolvent company and to appoint an inspector to examine the affairs of any insurance company. Provision is also made for preparation of proper accounts and balance sheets, for periodical valuations by an actuary, and for the making of a deposit by a company before commencing business. Where a life insurance company does other business, the life assurance fund must be completely separated and must be appropriated as security for the life policy holders. On the report of the Bill as presented by the Select Committee there was a long and interesting debate in the Governor-General's Legislative Council.

**Bengal, Bihar and Orissa, and Assam Laws.**—The Bengal, Bihar and Orissa, and Assam Laws Act (No. 7) is a measure consequent on the redistribution of territories announced at the Delhi Coronation Durbar of 1911,<sup>2</sup> and provides for the application of previous enactments to the provinces as newly constituted. It also sets up a Board of Revenue for the province of Bihar and Orissa.

**Wild Birds and Animals' Protection.**—The Wild Birds and Animals' Protection Act (No. 8) will be studied with interest by those who have followed the course of legislation on this subject in other countries. Until 1887 no legislation was considered necessary in India. An Act of that year enabled local governments and municipal and cantonment authorities to make rules prohibiting under penalties the sale or possession of wild birds recently

<sup>1</sup> On this and the following Act see the fifth Decennial Moral and Material Progress Report, p. 298.

<sup>2</sup> As to the territorial and other changes effected in pursuance of the Coronation Durbar proclamations, see the second supplementary chapter to Ilbert's *Government of India* (2nd ed.).

killed or taken during their breeding seasons, and the importation into any municipal or cantonment area of the plumage of any wild birds during those seasons. And local governments were empowered to apply these provisions to animals other than birds.

Afterwards, in 1902 action was taken under the Sea Customs Act to prohibit the exportation of the skins and feathers of birds, except feathers of ostriches and skins and feathers exported *bonâ fide* as specimens illustrative of natural history. The Act of 1912 goes much further than the previous law. It schedules a list of wild birds and animals to which the Act is to apply in the first instance, enables local governments to extend this list, empowers local governments to establish "close times," presumably during the breeding seasons, in the whole of their territories or in specified areas, for wild birds and animals to which the Act applies, and imposes penalties for the capture, sale, and purchase of birds and animals in contravention of the "close time" regulations, and for the sale, purchase, and possession of plumage taken from birds during the close time. There is power to grant exemptions in the interests of scientific research, and there are savings for the capture or killing by any person of a wild animal in defence of himself or of any other person, and for the capture or killing of any wild bird or animal in *bonâ fide* defence of property.

**Small Cause Courts.**—The Presidency Small Cause Courts Amendment Act (No. 9) extends the limit of jurisdiction of small cause courts in land cases from a rack rent of Rs. 1,000 to a rack rent of Rs. 2,000.

**Divorce.**—The Indian Divorce Amendment Act (No. 10) removes a doubt arising from the conflict of judicial decisions by providing that nothing in s. 7 of the Divorce Act of 1869 is to deprive the courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded.

**Local Loans.**—The Local Authorities' (Emergency) Loans Amendment Act (No. 11) delegates to local governments the power to authorise loans for emergencies such as famines or epidemics. This was one of the measures of decentralisation recommended by the Decentralisation Commission.

**Motor Vehicles.**—The Motor Vehicles International Circulation Act (No. 12), like the English Act for the same purpose, was passed to give effect to the International Convention on the subject of facilitating international travelling by motor-car.

**Delhi Laws.**—The Delhi Laws Act (No. 13) is framed on the same lines as the Act for Bengal, Bihar and Orissa, and Assam (No. 7),<sup>1</sup> and provides for the application of previously existing laws to the new province of Delhi.

## 2. MADRAS.

Acts passed—0.

<sup>1</sup> See *supra*, p. 71.

## 3. BOMBAY.

Acts passed—13.

**Horse Racing.**—The Bombay Race Courses Licensing Act (No. 3) prohibits horse races except on licensed racecourses. But the Act extends only to such areas as may be notified in the Government *Gazette*.

**Medical Practitioners.**—The Bombay Medical Act (No. 6) provides for the registration of medical practitioners, and for that purpose establishes a medical council who will control the keeping of the register and have power to remove from it the name of any medical practitioner guilty of any grave misconduct or unprofessional act. The measure follows in general outline the English Medical Act of 1858,<sup>1</sup> but does not prohibit the recovery of charges by unregistered persons. What it does is to leave the unregistered *vaid*s and *hakim*s at liberty to continue their practice, but to confer certain privileges on registered practitioners and place them under a certain amount of control. An unregistered person is not to be considered a legally or duly qualified medical practitioner under any Act in force in the Presidency, or to be entitled to give any certificate required by any such Act. Nor can he be appointed to be medical officer in any hospital or dispensary not supported entirely by voluntary contributions. A registered practitioner is exempted from serving on inquests. It is clear from the debates in Council that the measure aroused the kind of suspicion and met with the kind of opposition always evoked by proposals to register a profession or occupation. It was asked why the Act, if needed, was not passed as a general law by the Governor-General's Council.

**Smoke Nuisances.**—The Bombay Smoke Nuisances Act (No. 7) is drawn on the lines of the Bengal Smoke Nuisance Act of 1905,<sup>2</sup> which was said to have been remarkably successful in reducing the smoke nuisance in Calcutta. Those who have visited Bombay in recent years will easily realise the need for such legislation. The city, with its lovely surroundings, has become like Sheffield. One has only to approach Bombay by land or sea on a cold-weather morning, said the member who introduced the Bill, to find the whole city being gradually enveloped in a dense pall of smoke issuing from hundreds of factory chimneys.

**Land Tenures.**—The Khoti Settlement Amendment Act (No. 8) is a very technical land tenure Act, which, among other things, declares that the rights of Khots, Dhárekaris, and quasi-Dhárekaris shall be heritable and transferable.

**Excise.**—Act No. 12, which has no statutory short title, makes miscellaneous amendments in the Bombay Abkári Act, 1878. The Act of 1878 was the first of the series of Excise Acts which have since been passed for

<sup>1</sup> 21 & 22 Vict. c. 90.

<sup>2</sup> No. 3 of 1905. See *Legislation of the Empire*, vol. i. p. 30.

different parts of India, and the object of the amendments was to give effect to suggestions derived from the working of the Bombay Act of 1878 and of its successors in other provinces, and in particular to the recommendations made by the Indian Excise Committee. Among other things the Act strengthens the powers for dealing with the illicit traffic in cocaine.

#### 4 BENGAL.

Acts passed—2.

**Mining Settlements.**—The object of the Bengal Mining Settlements Act (No. 2) is to provide for the better control and sanitation of mining settlements in Bengal. The Local Government may establish for any specified area or areas a Mining Board of Health, consisting of persons appointed partly by the Government, partly by mine-owners, and partly by royalty owners. The Local Government may also appoint sanitary officers for mining settlements and attach them to the boards of health. The duty of a sanitary officer is to report to his board of health what measures should, in his opinion, be taken to provide for the supply of filtered, boiled or other water, for sanitation and conservancy, and for the housing of residents, and to exercise, subject to the control of his board of health, other functions calculated to prevent the outbreak or spread of dangerous epidemic diseases. There are provisions for requiring mine-owners to execute and maintain works of sanitation or to carry on periodical examinations, and for the charging, apportionment, and recovery of expenses. And the Local Government is given extensive powers of making rules for carrying out the purposes and objects of the Act.

#### 5. EASTERN BENGAL AND ASSAM.

Acts passed—3.

The Legislative Council for this now defunct province found time just before its dissolution to pass three Acts.

**Tea Gardens.**—The Jalpaiguri Labour Act (No. 2) arose out of an unfavourable report on the sanitary condition of labourers in tea gardens in the region known as the Western Duars. The Act requires the persons in charge of these tea gardens to keep registers of persons employed and to make periodical returns to the Local Government. It enables Government inspectors to verify the accuracy of entries in these registers and returns, to inspect lands and houses on the tea estates, to have persons employed brought before them, and to make inquiries and requisitions, which employees are bound to answer and comply with.

**Military Police.**—The Eastern Bengal and Assam Military Police Act

(No. 3) established a code of discipline for the regulation of the military police of the province, who had previously been partly under an Act of the Governor-General's Council and partly under an Assam Regulation.

## 6. UNITED PROVINCES.

Acts passed—6.

**Court of Wards.**—The United Provinces Court of Wards Act (No. 4) belongs to the large family of Indian Acts which enable the Government to take charge, in special cases, of the property of private landowners, with the object, among other things, of preventing the breaking up of ancestral estates. The Act of 1912 repeals and supersedes, with amendments, the previous Act of 1899.<sup>1</sup> The Board of Revenue is the Court of Wards for the provinces, and exercises the powers of the Government with respect to Government wards and to estates taken under Government management. The new Act enlarges the list of persons (including minors, women, lunatics, and others) who might under the previous Act be declared disqualified to manage their own property, by adding to it persons who have entered upon a course of extravagance, *i.e.* spendthrifts. This extension of the paternal powers of Government met with some criticism in Council.

## 7. PUNJAB.

Acts passed—6.

**Canal Colonies.**—The Colonisation of Government Lands (Punjab) Act (No. 5) regulates the position and rights of Government tenants in the canal colonies, where irrigation canals have completely transformed the character of the country. In the neighbourhood of the Chenab Canal the population of lands, formerly waste and sparsely inhabited by nomad tribes, has increased in twenty years from about 70,000 to over 1,110,000, and the whole colony is now said to be as well cultivated as any part of India.<sup>2</sup> The policy of the Government, differing from that adopted in 1907, appears to be now to convert the Government tenants on easy terms into proprietors, subject, however, to the restrictions on transfer imposed by the Alienation of Land Act.

**Panchayats.**—The Punjab Panchayats Act (No. 6) provides for the establishment of panchayats or popular courts, not for administrative purposes, but for the disposal of petty civil suits. The jurisdiction is to be by consent. Court fees on plaints are remitted. Legal practitioners are not allowed to appear. Subject to a power of revision by the district judge, the decrees of panchayats are to be final. The expediency of establishing such courts, and the possibility of maintaining them, have long been subjects of controversy in India, and the measure is obviously tentative and experimental.

<sup>1</sup> No. 3 of 1899. See *Legislation of the Empire*, vol. 1. p. 55.

<sup>2</sup> See the fifth Decennial Moral and Material Progress Report, pp. 224, 225.

## 8. BURMA.

Acts passed—4.

**Forests.**—The Burma Forest Amendment Act (No. 1) makes some changes in the direction of decentralisation, and empowers the Local Government to levy a duty on manufactured lac.

**Villages.**—The Burma Towns and Villages Amendment Act (No. 2) deals with various questions connected with the powers and duties of village headmen and other matters.

**Rangoon Port.**—The Rangoon Port Amendment Act (No. 3) amends the Port Act of 1905 and regulates the use of the foreshores of the port. The intention is that, while foreshore occupiers are to be permitted to use their foreshore for landing and shipping goods in the ordinary course of their business, they will not be permitted to use their foreshore as general wharfingers in competition with the Port Commissioners, or to levy tolls from any persons who may wish to land goods. The Act also amends the provisions of the Act of 1905 as to the constitution and powers of the Port Commissioners.

## 9. REGULATIONS UNDER 33 VICT. C. 3.

Regulations made—5.

**Laccadive Islands and Minicoy.**—Regulation No. 1 provides for the administration of criminal and civil justice in the Laccadive Islands and the island of Minicoy, in the Indian Ocean, to the S.W. of the Indian mainland. These islands, which had for many years been administered by the British Government, were in 1909 formally ceded and included within the limits of the Madras Presidency. The last section of the Regulation enables the Governor-General in Council to prohibit by Order persons residing on the mainland from visiting or taking up their residence in these islands, and to require persons ordinarily residing on the mainland who have taken up their residence in the islands to leave the islands.

## 10. ORDINANCE UNDER S. 23 OF THE INDIAN COUNCILS ACT, 1861.

**Cotton Gambling.**—The Bengal Cotton Gambling Ordinance was passed for the purpose of suppressing in the town of Calcutta a form of wagering known as cotton gambling. Ordinances of this kind are temporary, and only seven of them have ever been passed. The necessity for a temporary Ordinance in this case arose from the fact that at the time no legislative council existed for the new province of Bengal. The Ordinance has since been superseded by a Bengal Act.



## III. EASTERN COLONIES.

## 1. CEYLON.

[Contributed by LEWIS MAARTENSZ, Esq., *Additional District Judge, Colombo, Ceylon.*]

Ordinances passed—27.

The majority of the Ordinances enacted during the year 1912 were amending Ordinances, which did not effect any radical change in the Ordinances amended.

**Elephant Kraals.**—The object of the Elephant Kraal Regulation Ordinance (No. 1) is to prevent the assembling of crowds at elephant kraals so as to render the operations for the capture of elephants difficult and ineffectual. Provision is also made prohibiting the kraaling of elephants without the sanction of the Governor. Power is taken to make rules for the purpose of (1) prescribing the conditions under which such sanction will be granted, and (2) regulating the attendance of the public at kraals and the erection of huts and other buildings in the vicinity. Police officers not below the rank of inspector and persons authorised in writing by the Government Agent or Assistant Government Agent are empowered to arrest persons found, without lawful excuse, within prohibited areas, and to prevent those not legally entitled entering the prohibited areas. The Ordinance is not to apply to elephant kraaling by any person who satisfies the Governor that the right to kraal elephants in any particular locality has been conceded to him by Government.

**Public Performances.**—A “public performance” includes (a) every public dramatic representation; (b) every exhibition of pictures or optical effects by means of a cinematograph, magic lantern, or other similar apparatus; and (c) every exhibition of dancing, conjuring, juggling, acrobatic performances, boxing contest, circus, concert or other stage entertainment.

The Ordinance (No. 7) is enacted with a view to the prevention of objectionable performances and to protect the public against the danger of fire, overcrowding, or disorder. The Governor is empowered to make rules (a) for the issue of licences for buildings or erections used for public performances or for a particular public performance; (b) for the regulation of the character of public performances; (c) for the submission to the prescribed authority of a description of any public performance before it is advertised or exhibited; (d) for the regulation of the structural condition of licensed buildings or erections.

The Ordinance is not to apply to municipal areas in respect of which by-laws for the regulation of public performances have been made or shall hereafter be made under the power granted to Municipal Councils by the Municipal Councils Ordinance, 1910.<sup>1</sup> Municipal Councils are empowered

<sup>1</sup> No. 6 of 1910. See Journal, vol. xii. p. 373.

to make such by-laws as the Governor in Council may make under this Ordinance.

**Labourers' Diseases.**—"Disease" means any disease which may from time to time be proclaimed by the Governor in Executive Council.

"Labourer" includes Kanganies and female labourers and any child or other relative of any labourer residing on the estate.

The Ordinance (No. 10) extends in the first instance only to agricultural estates of which ten acres or more are cultivated, but is capable of further extension (*a*) to smaller estates in which disease has actually broken out ; (*b*) to labourers employed by any other employer, or a Government Department, if housed under such conditions that the Ordinance is capable of application to their residential quarters.

The scheme of the Ordinance is that where any infectious or contagious disease breaks out upon any estate in severe form the estate is to be visited by a District Medical Officer, who is to give the necessary directions for the treatment of the labourers either on the estate or in hospital. If exceptional measures are necessary the Principal Civil Medical Officer may direct the superintendent of the estate to carry out such measures. If the superintendent fails to carry out the directions, the Government may have them carried out at the expense of the estate. Power is taken to enable the Governor in Council to condemn insanitary cooly lines and order their reconstruction on the same or different sites.

**Aerial Navigation.**—The Ordinance (No. 18) is modelled on the English Aerial Navigation Act of 1911.<sup>1</sup> It provides in addition against the dangers to the State which might arise through the use of air-craft with a view to observing military works. The Governor in Executive Council may by order notified in the Government *Gazette* from time to time prohibit the navigation of air-craft over prescribed areas. Any person found guilty of contravening any such order is liable on conviction to imprisonment not exceeding six months or to a fine not exceeding Rs. 1,000, or to both. The magistrate may order the detention of the air-craft pending trial. If in any case the magistrate is satisfied that there is reasonable ground to suspect that the air-craft was used in contravention of the Ordinance for a purpose prejudicial to the interests of the State, the burden of proof that the air-craft was not used for such purpose is on the person charged. If it is proved that the air-craft was used for such purpose or if the person charged fails to discharge the burden of proof, the magistrate may make an order for the confiscation of the air-craft.

**Lepers.**—Ordinance No. 15 introduces an amendment of the Lepers Ordinance, 1901.<sup>2</sup> The object of the amendment is to afford similar protection to the property of lepers detained under the principal Ordinance, as is afforded to the property of minors and lunatics by the Civil Procedure

<sup>1</sup> See Journal, vol. xiii. p. 312.

<sup>2</sup> No. 4 of 1901. See *Legislation of the Empire*, vol. iii. p. 72.

Code. Accordingly any leper detained in a leper asylum may apply to the District Court of the district in which he resided before his detention (a) for the administration of his property under the supervision of the Court by a manager nominated by such leper, and (b) for the sale of his property or any part of his property and the administration of the proceeds thereof under the supervision of the Court. Every such application must be in the prescribed form, and must be presented through the superintendent of the Asylum. The Court may exempt the proceedings from stamp duty.

## 2. HONG-KONG.

[Contributed by C. G. ALABASTER, ESQ., *Editor of the New Revised Edition of the Laws of Hong Kong, Acting Attorney-General.*]

### Ordinances passed—43.

**Holidays.**—The Holidays Ordinance, 1912 (No. 5), defines a public holiday as “a day which (subject to the provisions of s. 5) shall be kept as a holiday by all educational establishments, public offices, and Government departments,” and a general holiday as “a day which (subject to the provisions of s. 5) shall be a *dies non* and which shall be kept as a holiday by all banks, educational establishments, public offices, and Government departments.” By s. 5 power is given to the Governor to make regulations excluding any public office or Government department from the operation of the Ordinance. There is only one public holiday as such—Empire Day—but the general holidays which include the lesser definition are (1) every Sunday; (2) the first week day in January; (3) Chinese New Year’s day, or if that day should be a Sunday, then the following day. Provided that if the Chinese hereafter adopt the Gregorian calendar, then the second week day in January; (4) Good Friday; (5) the day following Good Friday; (6) Easter Monday; (7) Whit Monday, (8) the first Monday in August; (9) the second Monday in October; (10) the Monday which falls on or nearest to the ninth day of November; (11) Christmas day, or if that day should be a Sunday, then the following day; (12) December 26, or if that day should be a Sunday, then the following day, unless Christmas day fall on a Sunday, then the Tuesday following Christmas day; (13) the birthday of his Majesty the King, unless it shall be ordered by the Governor, by an order published in the *Gazette*, that his Majesty’s birthday is to be kept on some other day, and then such other day.

Power is given to the Governor in Council to appoint special public or general holidays.

**Deportation.**—The Deportation Ordinances (Nos. 9 and 14) provide a house of detention for persons whose deportation is under consideration. Whenever it appears to the Governor that there are reasonable grounds for

inquiry as to whether any person should be deported, he may issue a warrant authorising the arrest and detention of such person for a period of six days (which may be extended by further warrants). Persons so detained may be admitted to bail. During the period an examination is held by the Registrar-General, who is empowered to put certain specified questions to the person whose case is under consideration, besides informing him of the allegations against him. The Registrar-General's report is considered by the Governor in Council, who has power to issue deportation orders. The normal orders are confined to persons not being natural-born or naturalised subjects of his Majesty, but at times of stress when the Colony is subject to a proclamation issued under the Peace Preservation Ordinance, 1886, power is given to deport naturalised British subjects, and a general power is conferred to issue deportation orders against British subjects, not belonging to Hong Kong, who have been imprisoned in the gaol of the Colony in pursuance of any sentence imposed by his Majesty's Supreme Court in China and Corea. Provision is also made for the automatic banishment of deportees from the Straits Settlements and the Federated Malay States.

The maximum period of imprisonment for disobedience to deportation orders varies with the length of the period of deportation, but is not in any case to exceed five years.

**Copper Coinage.**—The Foreign Copper Coin Ordinance (No. 11) prohibits the circulation of, and the importation without a licence of, copper and bronze coins of every description except Chinese cash, and except the legal currency specified in his Majesty's Order-in-Council of February 2, 1895.

The flooding of the Colony with the debased silver and copper currency of the neighbouring province of China had the effect of placing all subsidiary coins, whether Hong Kong currency or otherwise, at a discount, so that any one with a five-dollar paper note of one of the local banks could change it for five dollars and forty cents or more (the rate varied daily) in twenty, ten (silver) or single (copper) cent pieces. The effect on trade of this peculiar position was disastrous, and so the Government were forced to adopt the policy of exclusion by compulsion as the only method of restoring legal tender in subsidiary coins to par. The Ordinance under review was confined to copper and bronze, and has been successful in driving out the Kwang Tung cents. This success was not, however, achieved without a certain amount of opposition, and an attempt on the life of the Governor was ascribed by the perpetrator to discontent with the policy of exclusion. The next step in carrying out the policy was an agreement between certain tramway and ferry companies, with Government support, to refuse to take any silver coins, other than those of the Colony, in payment of fares. The opposition to this move was enormous, and the lower level tramways of the Colony were boycotted. The Government took energetic steps to cope with the disturbances. The Colony was made subject to the provisions of a proclamation under the Peace Preservation Ordinance, and a Boycott Prevention Ordinance was passed. A

further result was the passing of an Ordinance in the following year dealing on similar lines with silver coins, but as that was not passed until 1913 it does not come within the scope of this review.

**Limited Partnerships.**—The Limited Partnerships Ordinance (No. 18) introduces into the Colony provisions similar to those contained in the English Act of Ed. VII. c. 24. It applies, however, only to such partnerships carrying on business in the Colony as in the opinion of the Registrar of Companies can properly be described as non-Chinese partnerships, Chinese partnerships having been dealt with by the Chinese Partnerships Ordinance, 1911.<sup>1</sup>

**Advertisements.**—The Advertisements Regulation Ordinance (No. 19) enables the Governor in Council, subject to the approval of the Legislature, to make regulations (1) for the regulation and control of hoardings and similar structures used for the purpose of advertising, and (2) for regulating, restricting, or preventing the exhibition of advertisements in such places and in such manner or by such means as to affect injuriously the amenities of any public place, or to disfigure the natural beauty of a landscape or of the waters of the Colony, or of the clouds or sky.

**Copyright.**—As the provisions of the Imperial Copyright Act have been applied to the Colony by proclamation, the Copyright Repeal Ordinance (No. 24) repealed all the colonial enactments on the subject with the exception of sections 1, 8 and 9 of Ordinance No. 17 of 1901.

**Aviation.**—The Airships Ordinance (No. 26) makes it unlawful for any person to make an ascent in a balloon, whether dirigible or otherwise, or in an airship or aeroplane, or, having ascended elsewhere, to make any flight over or above any portion of the Colony, or its waters, or to descend in any such vessel or by means of a parachute or other contrivance, without having previously obtained the permission in writing of the Governor. Any such permission may be accompanied with any conditions the Governor may think fit to impose. Contraventions of the provisions of the Ordinance are punished with fines, imprisonment, and forfeiture of any photographs, negatives, photographic apparatus, sketches, sketching materials, maps, and plans not expressly authorised by the permission aforesaid.

**Full Court.**—The Full Court Ordinances (Nos. 27 and 39) change the constitution of the Full Court by making provision for the appointment of a third judge. Pending such an appointment in the permanent service of the Colony and generally where the three judges are not available, interlocutory appeals, appeals from the Court in its summary jurisdiction, appeals from magistrates and points reserved for consideration are assigned to a Court of two judges, but in other cases the third judge is either borrowed from the bench of the Supreme Court of China and Corea or else is appointed *ad hoc* from the Bar. Any barrister so appointed must be of at least seven years' standing. Where a Full Court of three judges sits, the judgment or order of any two is to be

<sup>1</sup> See Journal, vol. xii. p. 337.

deemed the judgment of the Court. Where a Full Court of two judges sits in appellate jurisdiction and the two differ, then the judgment or order appealed from is to be disturbed only in so far as it may be modified or affected by any order they may make as to which they do not differ. Where a Full Court of two judges sits otherwise than in appellate jurisdiction and the two differ, the judgment of the senior judge shall prevail, subject to a right conferred on any party aggrieved to a rehearing by a Court of three judges.

**Electricity.**—The Larceny Amendment Ordinance (No. 28), based on 45 & 46 Vict. c. 56, s. 23, punishes malicious or fraudulent abstraction, waste, diversion, or consumption of electricity.

**Innkeepers.**—The Innkeepers Ordinance (No. 29), which is based on 41 & 42 Vict. c. 38, gives an innkeeper a right of sale in addition to his lien.

**Revenue Officers.**—The Revenue Officers Power of Arrest Ordinance (No. 31) gives such officers power to arrest without warrant persons found committing offences against various Ordinances which chiefly deal with the possession of prohibited articles or with the possession without licence of articles in respect of which licences are necessary.

**Law Officers.**—The Crown Solicitors Ordinance (No. 35) provides for the appointment of a Crown Solicitor and an assistant Crown Solicitor. The former must be fully qualified as a barrister or solicitor. The latter must have passed the necessary examinations for either branch of the legal profession, but need not have been called or admitted. The latter provision met with local opposition from the legal profession, but it has not become acute, as the first appointments have been of fully qualified men. With the consent of the Governor the Crown Solicitors may act for the naval and military authorities, or on behalf of Government employees in cases where the Crown or the Government or any other department thereof is interested. Moreover, the Government may charge reasonable fees for work done by these law officers on behalf of the naval and military authorities and also—this appears to be unusual—for work done in connection with extradition proceedings.

**Vehicles.**—The Vehicles and Traffic Regulation Ordinance (No. 40) enables the Governor in Council to make regulations for the licensing of vehicles and the control of traffic generally.

**Boycotting.**—The Boycott Prevention Ordinance (No. 41) has already been referred to in the notes on copper coinage.<sup>1</sup> It deals with boycotting generally, but was aimed more particularly at the tramway boycott which reached its height in December 1912. Besides punishing those guilty of violence, threats, or intimidation, it enables the Governor in Council to declare by proclamation boycotting areas. Such proclamations may impose special rates on the householders in the proclaimed areas. Individual persons or individual properties in the boycotting areas may be exempted from the rate, and the whole or any part of the rate may be used as compensation for sufferers from the boycott.

<sup>1</sup> See *supra*, p. 80.

**Chinese Marriages.**—The Chinese Marriage Preservation Ordinance (No. 42) punishes with fine and imprisonment adultery by or with Chinese women married according to the laws or customs of China. Magistrates are also given power to award compensation to injured husbands, but the receipt of such compensation is made a bar to proceedings for the recovery of damages for criminal conversation.

## OTHER ORDINANCES.

- No. 1. Law Revision.
- No. 2. Law Amendment.
- No. 3. Births and Deaths Registration Amendment.
- No. 4. Gambling Amendment.
- No. 6. Arms and Ammunition Amendment.
- No. 7. Liquors Amendment.
- No. 8. General Revision.
- No. 10. Dangerous Goods Amendment.
- No. 12. Law Revision (No. 2).
- No. 13. Law Amendment (No. 2).
- No. 15. Magistrates Amendment.
- No. 16. Law Revision (No. 3).
- No. 17. Law Amendment (No. 3).
- No. 20. Tramway Amendment.
- No. 21. Law Revision (supplementary).
- No. 22. Law Amendment (supplementary).
- No. 23. General Revision Amendment.
- No. 25. Supplementary Appropriation.
- No. 30. Magistrates Further Amendment.
- No. 32. Post Office Amendment.
- No. 33. Criminal Sessions (Amends Ordinances No. 3 of 1890 and No. 9 of 1899).
- No. 34. Merchant Shipping Amendment.
- No. 36. China Congregational Church Incorporation.
- No. 37. Further Supplementary Appropriation.
- No. 38. Appropriation.
- No. 43. Final Revision.

## 3. STRAITS SETTLEMENTS.

[Contributed by A. DE MELLO, ESQ.]

Ordinances passed—17.

The legislation of this Colony for the year 1912, like that for 1911, has been comparatively small in bulk, but some noteworthy enactments have been passed.

**Betting.**—Ordinance No. 16 is framed in the spirit of the English Betting Acts of 1853 and 1874,<sup>1</sup> being designed to suppress betting houses and betting in public places. Its language and arrangement follow, *mutatis mutandis*, that of the Common Gaming Houses Ordinance (No. 5 of 1888).

A "common betting house" is declared by the Ordinance to be a "common nuisance and contrary to law," and is therein defined to mean "any place kept or used for betting or wagering on any event or contingency of or relating to any horse-race or other race, fight, game, sport, or exercise to which the public or any class of the public has or may have access, and any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid, whether the public has or may have access thereto or not." Further, places where betting instruments and appliances are found or places whence persons escape on the advent of a Justice of the Peace or police officer empowered to search, or places which such officers are unlawfully prevented from entering, are presumed, in default of rebutting evidence, to be "common betting houses," and so "kept or used," within the meaning of the definition clause, by the occupier thereof. Exemptions from the penalties of the Ordinance are, however, made, by ss. 10 and 15, in favour of race-courses and adjoining grounds on race days.

A person betting or wagering in a common betting house is liable to a fine of \$25. The offences of keeping a common betting house, or permitting it to be so kept, or managing it, or advertising it, or advancing money for conducting it, as well as receiving money in respect of bets or wagers, are all made punishable with the severe penalty of \$3,000 (= £350) or twelve months' imprisonment for the first offence, and for a second offence the offender may be bound over against future violation of the Ordinance.

The offence of betting in a public place is punishable in the case of a first offender with a fine of \$100, in the case of a second offender with a fine of \$200, and in the case of a third offender or a person having a betting transaction with a person aged under sixteen years, with a fine of \$500 or six months' imprisonment.

S. 11 provides for accused persons, if called upon to give evidence for the prosecution, and thereupon making a true and full discovery of all things within their knowledge, being indemnified against all legal proceedings in respect of those things.

**Explosives.**—Ordinance No. 14 amends the Explosives Ordinance<sup>2</sup> by penalising the manufacture, possession, or importation of sand-crackers, the indiscriminate use of which by misguided persons led to serious riots in Kuala Lumpur (Federated Malay States) early in 1912. A similar measure<sup>3</sup> has been passed by the Federal Council of the Federated Malay States.

**Harbour Works and Foreshores Reclamation.**—Ordinance No. 10 gives the Government power to construct, with the aid of colonial revenues, public

<sup>1</sup> 16 & 17 Vict. c. 119. and 37 & 38 Vict. c. 15.

<sup>2</sup> No. 1 of 1899.

<sup>3</sup> Enactment No. 5 of 1912. See *infra*, p. 88.



works in the harbours, and to reclaim the foreshore and seabed, and to lease the same when desired in the interests of the increasing commercial needs of the Colony. Lands so reclaimed may be proclaimed by the Governor to be "Crown land," and, as such, freed and discharged from all public and private rights previously attaching to them.

The Ordinance provides for payment of compensation in respect of lands or any interest therein, where damage—

- (a) is caused by reason of works authorised by the Ordinance, and
- (b) arises from the execution of the works, and not by their subsequent use ;
- (c) arises from what would, if done without the sanction of the Ordinance, have given rise to a cause of action, and
- (d) where the compensation is claimed in respect of interference with a public or private right, the damage arises from a physical interference with such rights, to the use of which the owner or occupier of the property is legally entitled, and by reason of which an additional market-value is conferred upon the property (s. 5).

The Governor is, by notification in the *Gazette*, to call from persons who may be injuriously affected by the proposed works for particulars of their claims to compensation to be furnished within six months of the notification (s. 6) ; and, if the Government disputes such claim, the matter may be referred by way of an originating summons to the Supreme Court for a declaration as to whether the right of the claimant is or is not established (s. 7).

The Collector of Land Revenue is constituted referee as to the amount of compensation to be awarded (s. 8). The claimant may recover from the Government costs up to \$500 incurred in preparing his claim (s. 10)

**Interpretation.**—Ordinance No. 6 supersedes the General Clauses Ordinance (No. 1 of 1888) and its amendments, and provides in a more adequate form, on the basis of the Imperial Interpretation Act, 1889,<sup>1</sup> for the legal construction of Ordinances and other written laws and for further shortening the language thereof.

**Pensions.**—Ordinance No. 4 was passed on the recommendation of the Secretary of State for the Colonies, despite considerable opposition on the part of the unofficial section of the Legislative Council. Since 1888 the Governor in Council could, under Ordinance No. 8 of 1887, require any judge or other public officer to retire from the public service of the Colony at any time after he attained the age of sixty years ; but the present enactment now reduces the age limit for retirement to fifty-five years ; and it was considered by the unofficial members of Council that this measure, though beneficial from the point of view of the individual, would tend, so far as concerned judges of the Supreme Court at least in particular, to deprive the

<sup>1</sup> 52 & 53 Vict. c. 63.

Colony of an officer whose services, by the very nature of his work, would increase, rather than diminish, in value with the age of the officer.

**Public Authorities' Protection.**—Ordinance No. 11, founded on the English Statute of 1893,<sup>1</sup> embodies in one comprehensive enactment the various provisions securing immunity to public officers from legal proceedings, which had hitherto been interspersed through no less than nineteen different Ordinances.

**Straits Settlements Ports.**—Ordinance No. 5 institutes Harbour Boards for the ports of Singapore and Penang in supersession of the "Tanjong Pagar Dock Board," created by Ordinance No. 7 of 1905. The Boards are to consist of between four and six members each and a chairman—all appointed by the Governor of the Colony. In addition to this, the Governor may appoint a local chairman for either Board, who, however, shall not act as such so long as the chairman is in the Settlement, and is not incapacitated by illness or other sufficient cause from so acting.

Bankruptcy, absence from the Settlement for more than three months without leave, and the holding of any office or place of profit under the Board disqualify from membership: moreover, members are prohibited from voting in respect of matters in which they may have more or less of a personal interest.

Each Board is to meet at least twice a month, and three members form a quorum.

The Boards are mutually to assist each other, and any differences between them are referable to the decision of the Governor.

Each Board has power to own movable and immovable property in its particular Settlement, and may sell, lease, mortgage, exchange, or otherwise convey the same; but such acquisition or disposal of property must be with the sanction of the Governor. The Ordinance, however, vests certain lands mentioned therein in the Singapore and Penang Boards immediately (s. 30). The Crown is to have a first charge on all immovable property at any time vested in or acquired by a Board, to secure moneys due by it to the Crown (s. 31); and the capital debt due by the Singapore and Pahang Harbour Boards to the Crown is taken by the Ordinance at the amount due on December 31, 1911.

The Ordinance empowers the Governor in Council to lend money on interest to the Board from the colonial revenues (s. 36).

The Boards, like the municipalities of the Colony, are authorised to enter into contracts for carrying on current business; but expenditure, if over \$5,000, must be previously approved by the Board, and if over \$30,000, by the Governor; and contracts involving expenditure of over \$5,000 must be in writing (ss. 40, 41).

The application of the provisions of the Municipal Ordinance to the property of the Boards, especially in reference to payment of rates, is restricted.

<sup>1</sup> 56 & 57 Vict. c. 61.

The Boards have power to levy their own rates for use of their docks, vessels, wharves, etc., and may detain goods until payment thereof.

Finally, the Boards are empowered to make by-laws, to enrol special police for their own use, and to proceed, civilly or criminally, against violators of the rights and privileges conferred on them by the Ordinance.

**Theatres.**—Ordinance No. 2 is the outcome of a suggestion on the part of the Secretary of State for the Colonies that, in view of the increase of cinematographic exhibitions, some supervision should be placed upon them, as by recent legislation in the Colony of Hong Kong and some of the West Indian Colonies, in the interests of public order and good taste. The present Ordinance, therefore, amends the Theatres Ordinance of 1908 by requiring every cinematograph scene intended to be publicly exhibited to be first presented to the chief police officer for his approval.

**Wireless Telegraphy.**—Ordinance No. 15 prohibits the establishment of any wireless telegraph installation without a licence from the Governor.

Minor enactments, comprising chiefly amendments of detail and of purely local interest, are :

The Lighthouse Ordinance (No. 17) ;

The Liquors Revenue Ordinance (No. 7) ;

The Merchant Shipping Ordinance (No. 13) ;

The Registration of Deeds (Singapore) Ordinance (No. 1) ; and

The Straits and Federated Malay States Government Medical School Ordinance (No. 9).

#### 4. FEDERATED MALAY STATES.

[*Contributed by A. DE MELLO, Esq.*]

Enactments passed—23.

The enactments for 1912, though all passed during the last four months of the year, have been the most voluminous since the establishment in 1909 of one Federal Legislative Council for the whole group of the Malay States, and a great part of that legislation has been directed towards assimilating the law of the States more and more to that of the Colony of the Straits Settlements on the one hand, and to that of the United Kingdom on the other.

**Arbitration.**—Enactment No. 17 is practically a replica of the English Arbitration Act of 1889,<sup>1</sup> and deals more effectually than had hitherto been done by the meagre provisions of the Civil Procedure Code,<sup>2</sup> or the Specific Relief Enactment, 1903, with the subject of arbitration, whether by consent or otherwise.

**Bankruptcy.**—Enactment No. 2, necessitated by the growing commercial activity of the States, is again in effect a reproduction of the Bankruptcy

<sup>1</sup> 52 & 53 Vict. c. 49.

<sup>2</sup> 1902, chap. xxxvi.

Ordinance<sup>1</sup> of the Straits Settlements, which, in its turn, is modelled on the English Bankruptcy Acts of 1883 and 1890<sup>2</sup> and the Debtors Act of 1869. Prior to the passing of this Enactment, the subject of insolvency was dealt with on a small scale in chap. xx. of the Civil Procedure Code, 1902, in the same manner as in India under the Indian Civil Procedure Codes of 1882 and 1908.

**Anglican Church.**—The Bishop of Singapore is constituted, by Enactment No. 14, a Body Corporate in the Federated Malay States in the same manner as in the Colony of the Straits Settlements,<sup>3</sup> having a corporate seal and capable of owning and transferring property.

**Common Gaming Houses.**—Enactment No. 19 does away with the gambling farms that had hitherto proved a considerable source of revenue to the Government, and had latterly aroused some comment in Parliament. The Enactment, which is based on Ordinance No. 5 of 1888 on the same subject in the Straits, declares “common gaming houses” to be “a common nuisance and contrary to law,” and penalises their existence in the future by punishments rather more severe than those in the neighbouring Colony.

**Companies.**—By Enactment No. 9, a British or foreign company incorporated outside, but carrying on business within, the Federated Malay States, is required to file with the Registrar of Companies at the Federal capital, Kuala Lumpur, the following documents :

- (a) A certified copy of the enactment, charter, statute, memorandum or articles of its association ;
- (b) an authenticated list of its directors ;
- (c) an authenticated statement of the names and addresses of persons in the Federated Malay States who are authorised to accept on behalf of the company services of notices or process ;
- (d) in the case of a non-private company, an annual statement of accounts and balance sheet, duly audited.

**Counterfeit Coin.**—Enactment No. 10 requires the defacement by the receiver of coin suspected to be diminished in value or counterfeit, and the person who tenders it to him is chargeable with the loss thus arising.

**Drugs.**—Enactment No. 15 restricts the manufacture and sale of morphine, cocaine, and their salts to duly qualified and licensed persons.

**Excise.**—Enactment No. 18 amends the enactments on the same subject of the years 1908 and 1909 by enabling the Government to lease the exclusive right of selling toddy.

**Explosives.**—Enactment No. 5 has the same object as Ordinance No. 14 of 1912<sup>4</sup> of the Straits Settlements. Both are levelled at the promiscuous throwing of explosives, such as sandcrackers, which led to serious disturbances among the Chinese population at Kuala Lumpur in the early

<sup>1</sup> No. 2 of 1888.

<sup>2</sup> 46 & 47 Vict. c. 52 ; and 53 & 54 Vict. c. 61.

<sup>3</sup> By virtue of Ordinance No. 14 of 1911.

<sup>4</sup> See *supra*, p. 84.

part of the year. The Enactment prohibits the use of "any explosive which is used so as to cause danger or annoyance to the public."

**Extradition and Fugitive Offenders.**—About the middle of the year 1903, the several Malay States—Negri Sembilan, Pahang, Perak, and Selangor—composing the Federation, had each passed the Criminal Fugitives' Surrender Enactment, adopting the procedure of the Imperial Extradition Act of 1870<sup>1</sup> for the surrender of fugitive criminals from British dependencies such as Ceylon, Hongkong, and the like. Towards the end of the following year, another measure, the Straits Settlements Offenders Enactment, 1904, made special provision, on the lines of Part I. of the Fugitive Offenders Act, 1881,<sup>2</sup> for the rendition by each of those States of persons accused or convicted of offences in the neighbouring Colony in particular.

But the Federated Malay States had hitherto occupied an anomalous position as regards extradition with foreign countries, and since the cession, in particular, by the Treaty of March 10, 1909, by Siam of the States of Kelantan, Tringganu, Perlis, and Kedah to the suzerainty of Great Britain, some legislation seemed necessary to prescribe the conditions of surrender of fugitive offenders in reference to Siam and the new Protected States. Accordingly, on the one hand, Enactment No. 21 of 1912 was passed, on the basis of the Order in Council of August 19, 1889, the Straits Settlements Extradition Order, 1889 (which is, in its turn, founded on the Imperial Extradition Act of 1870), to provide for surrender to foreign countries such as Siam, "together with every constituent part and dependency thereof, and any other foreign country to which the Chief Secretary to Government shall, by notification in the *Gazette*, have applied the provisions of the Enactment." The Enactment, like the Extradition Act, 1870, prohibits surrender (1) in the case of political offences, (2) in the case of subjects of the surrendering State; (3) unless there is an arrangement that the offender shall not be tried for any other offence than that for which he is being extradited. An "arrangement," such as is last referred to, was concluded with Siam by Treaty on November 20, 1912, extending the application of the Extradition Treaty of March 4, 1911, to the new Protected Malay States.

As regards fugitive offenders from the Colony of the Straits Settlements and the Protected Malay States, Enactment No. 11 of 1912 supersedes, practically *in toto*, the Straits Settlements Offenders Enactment, 1904, and provides for the rendition of fugitive offenders (after agreement between the Federated and Protected Malay States and the Colony) as if all three formed part of one group of British possessions under Part II. of the Imperial Fugitive Offenders Act, 1881. An "agreeing State" is accordingly defined to mean "any Malay State, over which His Britannic Majesty extends his protection, whose ruler, being desirous that the rendition of fugitive offenders as between his State and any other such States, and between it and the Colony shall take place under the provisions of the Fugitive Offenders Act, 1881, has

<sup>1</sup> 33 & 34 Vict. c. 52.

<sup>2</sup> 44 & 45 Vict. c. 69.

entered into an agreement with His Britannic Majesty's Government in pursuance whereof an Order in Council shall have been made directing that the Imperial Act shall apply to such State or States as if they were British possessions, and directing that Part II. of the Imperial Act shall apply to the Colony and such State or States as if they were a group of British possessions."

**Labour**—The new "Labour Code" (Enactment No. 6) consolidates in one comprehensive measure the numerous enactments passed by the individual States of the Federation between the years 1899 and 1909 to regulate the various departments of industry and the diverse labouring nationalities. The present Code includes, *e.g.*, provisions as to Chinese and Indian immigrants, as to labour contracts, as to mining labour, priority of wages and the truck system, sanitation on mines and agricultural estates, and the accommodation of workmen, as well as offences by labourers and legal proceedings in respect of them.

**Opium**.—Enactment No. 12 amends the Opium and Chandu Enactment of 1910 by prohibiting the possession of chandu (opium prepared for smoking) gross exceeding 3 tahils in weight.

**Planters' Benevolent Fund**.—Enactment No. 3 incorporates the Planters' Benevolent Fund of Malaya, and provides for the relief of necessitous European planters and their families.

**Powers of Attorney**.—Enactment No. 1 repeals the enactments on the same subject passed by the individual States towards the end of the year 1900, and provides that the execution of powers of attorney shall be verified by the attestation of at least one witness, and that the instrument shall be deposited in the Registry of the Supreme Court. The rest of the enactment contains provisions borrowed from the English Conveyancing and Law of Property Acts of 1881 and 1882.

**Railways**.—Enactment No. 4 repeals and re-enacts with small amendments in a comprehensive form for the entire peninsula the Railways Enactments passed by the individual States severally in the year 1903.

**Theatres**.—Enactment No. 7 was, like Ordinance No. 2 of 1912 of the Straits Settlements,<sup>1</sup> suggested by the Secretary of State for the Colonies, and provides, in the interests of public order and decency, for the previous examination and approval by a special official of all cinematograph films before their exhibition to the public.

**Traction Engines and Motor-Cars**.—Enactment No. 20 of 1912 is a replica of the Straits Ordinance No. 19 of 1911.<sup>2</sup>

**Treaties and Agreements Validation**.—Enactment No. 8 enables His Britannic Majesty's High Commissioner, in conformity with and furtherance of the Agreement of July 1895 for the Federation of the States of Perak, Selangor, Negri Sembilan and Pahang, to execute, after the written approval of the rulers and chiefs of those States, treaties and agreements for and on

<sup>1</sup> See *supra*, p. 87.

<sup>2</sup> See Journal, vol. xiii. p. 342.

their behalf as effectually as if executed by those rulers and chiefs themselves.

**Vehicles.**—Enactment No. 13 provides in a more effective form than the State enactments of 1899-1900 for the regulation and control of vehicular traffic through the Federation.

**Pahang.**—A special enactment enables the State of Pahang to resume and reallocate certain lands in the District of Pekan (Pahang) known as "Syed Hassan's Concession," which had been granted by the Sultan of Pahang to one Syed Hassan bin Ahmad Alatas on a ninety-nine years' lease in September 1888.

## 5. MAURITIUS

[Contributed by the *Procureur-Général*, A. HERCHENRODER, ESQ.]

Acts passed—39.

**Colonial Audit.**—The Audit (Transfer of Powers) Amendment Ordinances (Nos. 3 and 22) carry out the changes involved in existing laws, under which certain offices are held and duties performed *ex officio* by the Auditor-General, consequent on the placing of the accounts of Mauritius under the control of the Director of the Colonial Audit, and the substitution for an Auditor-General of a Local Auditor selected from the staff of the Colonial Audit Department.

**Medical Officer of Health.**—The Labour Law (Medical Officer Duties) Amendment Ordinance (No. 4) transfers the various duties and powers attached to the office of Medical Officer of the Immigration Department created under Art. 25 of Ordinance No. 12 of 1878 or vested in that officer to the Director of the Health Department, or such officer as the latter may appoint with the Governor's approval.

**Copyright.**—The Copyright (Repeal) Ordinance (No. 6) repeals the local Ordinance No. 24 of 1851 on the subject of copyright in consequence of the coming into operation in the Colony of the Copyright Act, 1911,<sup>1</sup> under Proclamation No. 33 of 1912.

**Customs.**—The Customs Tariff (Amendment) Ordinance (No. 11) reduces the import duty on ghee, while readjusting the duty on similar articles of diet (butter, margarine, and oils) with a view of maintaining at the same level the revenue obtained from these items of the Customs Tariff.

**Registration.**—The Registration of Voters (Amendment) Ordinance (No. 13) amends the law as to registration of voters<sup>2</sup> by providing that all claims by persons desirous of being registered as electors shall be made only in the district in respect of which the vote is to be enjoyed.

**Pensions.**—The Widows' and Orphans' Pension Fund (Actuaries) Ordinance (No. 14) settles difficulties which have from time to time arisen in

<sup>1</sup> 1 & 2 Geo. V. c. 46.

<sup>2</sup> Ordinances Nos. 5 of 1887 and 22 of 1895.

respect of quinquennial appointments of actuaries under Art. 36 of Ordinance No. 2 of 1886.

**Libel.**—The Prosecution of Certain Offences (Amendment) Ordinance (No. 15) empowers the Supreme Court without a jury to try seditious libels, and outrages committed against public officers (particularly those entrusted with the administration of justice).

**Magistrates.**—The Magistrates and Bench Jurisdiction (Extension) Ordinance (No. 16) removes doubts as to the powers of magistrates to act in any district of the Colony as "Riot Magistrates," under Art. 127 of Ordinance No. 23 of 1888 and Ordinance No. 11 of 1890; it also includes within the jurisdiction of Bench of Magistrates offences under Art. 352 of the Penal Code (riotous damage or destruction of property committed by a body or band, and with open force).

**Cinematographs.**—The Cinematograph Ordinance (No. 17) provides for the censorship and control of cinematograph exhibitions generally, on the lines of the Grenada Cinematograph Ordinance No. 9 of 1911<sup>1</sup> and the Hong Kong Ordinance No. 17 of 1910.<sup>2</sup>

**Money-Lending.**—The Money-Lending Transactions (Relief) Ordinance (No. 18) is reproduced from the Trinidad and Tobago Ordinance, No. 3 of 1912,<sup>3</sup> which is itself borrowed from ss. 1 and 4 of the Money-Lenders Act, 1900.<sup>4</sup> It allows of the reopening of money-lending transactions in the discretion of the Court where there is evidence which satisfies the Court that the interest or the amounts charged for expenses, etc., are excessive, and that the transaction is harsh and unconscionable, or is otherwise such that a Court of equity would give relief. The powers to relieve a borrower under Art. 1 are advisedly hedged round, as in the English Act, with conditions carefully designed to prevent any abuse. The duration of the Ordinance was limited to one year.

**Pharmacy.**—The Pharmacy Ordinance (No. 19) consolidates the pharmacy laws of the Colony. The main improvements are the following:

In Part I. it is made compulsory for a pharmacy shop to be in charge of a competent and responsible person.

In Part II. better provision is made for a Board of Examiners, and the conduct of examinations and the curriculum of studies.

Part III. deals with the attendance of the Pharmacist at his shop, the mixture of drugs, the dispensing of prescriptions, the sale of poisons, and the control and inspection of pharmacists' shops.

Part IV. deals with the substances to be deemed poisons under the Ordinance, and with regulations concerning the same.

The Ordinance is to come into force on a day to be fixed by Proclamation.

**Cremation.**—The Cremation (Amendment) Ordinance (No. 24) facilitates

<sup>1</sup> See Journal, vol. xiii, p. 458.

<sup>2</sup> See Journal, vol. xii p. 375.

<sup>3</sup> See *infra*, p. 233.

<sup>4</sup> 63 & 64 Vict. c. 51.



the procedure surrounding applications for cremation, while maintaining all essential safeguards.

**Wireless Telegraphy.**—The Wireless Telegraphy (Amendment) Ordinance (No. 25) completes the Wireless Telegraphy Ordinance No. 33 of 1903 by providing for the framing and issue of regulations concerning the use of wireless telegraphy on board merchant ships, whether British or foreign, while in the territorial waters of the Colony.

**Curator of Vacant Estates.**—The Curatelle (Amendment) Ordinance (No. 27) fixes a commission on a sliding scale on immovable property and on movable property not being money actually received as principal revenue or rent, in whatsoever manner vested in the Curator of Vacant Estates; it further provides for the mode of valuation of property vested in the Curator, and for the inscription of mortgage on such real property, and erasure thereof on proof of payment of the commission. It also fixes the time required for prescription in favour of the Government of estates or property belonging to absentees.

**Marriage.**—The Civil Status (Indian Marriages) Amendment Ordinance (No. 28) empowers the Governor to appoint Hindu and Mahomedan priests for the celebration of marriages between Hindus or Mahomedans of the same religion as such priests, and provides for the procedure for such marriages and the registration thereof, and for the conditions required for their validity.

**Donations inter vivos.**—The Donations inter vivos and Wills (Amendment) Ordinance (No. 29) empowers persons domiciled in the Colony, at the time of marriage, under certain conditions, to declare and cause to be recorded their intention that the limitations imposed by the local law (the Civil Code) regarding the power to dispose of property either by gift *inter vivos* or by will shall not apply to any estate, real or personal, of which they or either of them may die possessed.

**Department of Agriculture.**—The Department of Agriculture (Organisation) Ordinance (No. 30) provides for the establishment and organisation of a Department of Agriculture in the Colony.

**Companies.**—The Companies Ordinance, 1912 (No. 35), places on the Statute Book a measure borrowed from the English Companies (Consolidation) Act, 1908,<sup>1</sup> as adapted by the Transvaal Act No. 31 of 1909,<sup>2</sup> with certain additions and modifications to suit local circumstances.

**Supreme Court.**—The Supreme Court (Amendment) Ordinance (No. 36) provides for the hearing and determination of certain cases before one Judge only, and does away with the compulsory attendance of the Ministère Public in Court in causes where the Crown or the public revenue is concerned, and in any matter connected with the civil status of any person, any divorce, guardianship of any minor or interdicted person, or in which the Procureur-Général may, under the existing law, intervene as a party.

<sup>1</sup> 8 Ed. VII. c. 67.

<sup>2</sup> See Journal, vol. xi. p. 428.

**Church of Scotland.**—The Church of Scotland Presbyterial Committee (Amendment) Ordinance (No. 39) amends Art. 3 of Ordinance No. 31 of 1890 so as to transfer the powers given to the Presbyterial Committee thereunder in respect of management, investment, sale, mortgage, exchange, purchase, or acceptance of property from the said Presbyterial Committee to the minister and office-bearers of the respective congregations to which such property may belong or be given.

## 6. SEYCHELLES.<sup>1</sup>

Ordinances passed—9.

**Shipping.**—Provision is made by No. 1 for the repatriation of seamen who are natives of Seychelles, on their being discharged at any port outside the Colony, at the expense of the shipping company.

**Diseases of Plants.**—The Disinfection of Plants (Amendment) Ordinance, No. 3, empowers the agricultural authority, with the approval of the Governor, to dispose in any manner thought fit of all plants imported into Seychelles which cannot be sufficiently disinfected to ensure the destruction of all vegetable and insect pests.

**Judicial Separation.**—By an Ordinance relating to the making of summary orders for the maintenance of wives and children the Court is empowered to make orders respecting judicial separation, on certain conditions, to ensure the custody of the children and the support of such children and wife.

**Criminal Procedure.**—The Assessors Ordinance (No. 9) permits the assessors, on their fulfilling certain requirements, to separate during the trial for capital offences.

Ordinance No. 5 regulates the holding of cinematograph exhibitions, and No. 6 amends the law relating to the practice of medicine, surgery, and midwifery.

## 7. WEI-HAI-WEI.

Ordinances passed—2.

The first Ordinance refers to official secrets and the second regulates the charging of fees for quarrying. "The people of Wei-hai-wei for an indefinite period in the past have been in the habit of taking stone from the hillside in the neighbourhood of their villages for the purpose of building their own houses. The Ordinance is not intended to interfere with this practice, but to authorise the charging of fees for quarrying carried on by building contractors and professional stone-masons."<sup>2</sup>

<sup>1</sup> Based upon the annual Colonial Report, Cd 7050-1.

<sup>2</sup> Wei-hai-wei Report for 1912, Cd. 6667—5, p. 19.

## IV. AUSTRALASIA.

### 1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by R. R. GARRAN, ESQ., C.M.G.*]

Acts passed—43.

During the session of 1912 the Commonwealth Parliament passed forty-three Acts, and in addition six Bills dealing with the alteration of the Constitution and a Navigation Bill of considerable length were also passed through both Houses of the Legislature.

The six Bills for the alteration of the Constitution were submitted to a referendum of the electors, in accordance with the Constitution, on May 31, but were not carried at that referendum.

The Navigation Bill has been reserved by the Governor-General for the King's approval.

Among the Acts passed during the session were a number of minor amending Acts to rectify matters discovered in the administration of the principal Acts.

The more important work of the session may be conveniently dealt with under the following general heads:

**Constitution.**—The amendments of the Constitution submitted by the Bills for the alteration of the Constitution were in the main the same amendments as had been submitted to the electors in 1911, but they were now submitted in six different Bills, instead of in two Bills, as in 1911.

The first Bill, which dealt with the powers of the Commonwealth with regard to trade and commerce, proposed to alter paragraph (1) of s. 51 of the Constitution by omitting the words "with other countries and among the States," and by adding at the end of the paragraph the words "but not including trade and commerce upon railways the property of a State except so far as it is trade and commerce with other countries or among the States." Under the Constitution the Commonwealth Parliament only had power to deal with "trade and commerce with other countries and among the States." The effect of the proposed amendment would be to give the Commonwealth Parliament plenary power regarding trade and commerce, except in the case of intra-State trade and commerce upon the State railways. This exception was not included in the proposal submitted in 1911.

The second Bill proposed to amend paragraph (xx) of s. 51 of the Constitution so as to give the Commonwealth Parliament full power to deal with corporations other than municipal or governmental corporations or any corporation formed solely for religious, charitable, scientific, or artistic purposes, and not for the acquisition of gain by the corporation or its members.

The third Bill proposed to amend the Constitution as regards the power of the Commonwealth Parliament to deal with industrial matters. Under the Constitution the Commonwealth Parliament has power to legislate with regard to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." The Bill proposed to give the Commonwealth Parliament full power to deal with labour, employment, and unemployment.

By the fourth Bill it was proposed to empower the Commonwealth Parliament to legislate with regard to the prevention and settlement of industrial disputes in relation to employment on the State railway service. In the case of the *Federated Amalgamated Government Railway and Tramway Service Association v. New South Wales Railway Traffic Employees Association*, the High Court in 1906<sup>1</sup> had decided that the Commonwealth had no power to deal with industrial disputes in the State railway service.

The fifth Bill proposed to confer on the Commonwealth Parliament power to legislate with regard to "trusts, combinations, and monopolies in relation to the production, manufacture, or supply of goods, or the supply of services"

The sixth Bill dealt with the nationalisation of monopolies, and proposed to empower the Commonwealth Parliament to take over any industry or business declared by a Resolution of both Houses of Parliament to be the subject of a monopoly. The power did not extend to any industry or business conducted or carried on by a State or a public authority constituted under a State. This exemption was not included in the proposal submitted in 1911.

**Finance.**—One of the earliest Acts passed during the session was the Maternity Allowance Act, 1912 (No. 8), which provides for the payment of a maternity allowance of £5 to every woman who, after the commencement of the Act, gives birth to a child, either in Australia or on board a ship proceeding from one port in the Commonwealth or a territory of the Commonwealth to another port in the Commonwealth or a territory of the Commonwealth. To entitle a woman to the allowance she must be either an inhabitant of the Commonwealth or intending to settle therein, and must not be an Asiatic or an aboriginal native of Australia, Papua, or the islands of the Pacific. The allowance is payable if the child is born alive or is a viable child, but only one allowance is payable where more than one child is born at a birth. In the case of the death of the mother, the Commissioner of Maternity Allowances may pay the allowance to the person who, in his opinion, is best entitled to receive it.

The Tasmania Grant Act, 1912 (No. 13), makes provision for the grant of £500,000 to the State of Tasmania. This State had suffered financially as a result of federation, and the Commonwealth Parliament, under the power granted by s. 96 of the Constitution, has now made provision for

<sup>1</sup> [1906] 4 C.L.R. 448.

granting financial assistance to Tasmania. The payments extend over a period of ten years, beginning with the sum of £95,000 for the financial year 1912-13, and decreasing in arithmetical progression by the sum of £10,000 each year.

The Invalid and Old Age Pensions Act, 1912 (No. 27), amends the Invalid and Old Age Pensions Act, 1908-9. The Act, although it does not increase the rate or amount of pension, confers additional benefits by removing some of the restrictions on the qualifications for a pension, and by providing that the capital value of a pensioner's home is not to be regarded as forming part of the net capital value of accumulated property on which the pension is calculated. The Act provides that a permanently blind person over the age of sixteen years, who is not qualified for an invalid pension, and who is not receiving an old age pension, shall be qualified to receive an invalid pension. S. 12 of the Act makes it an offence to make wilfully any false statement or representation to obtain a pension certificate or pension, or any instalment of a pension, or to deceive any officer, or to affect the rate of any pension.

The Land Tax Assessment Act, 1912 (No. 3), amends the principal Act mainly on points which have arisen in the administration of the principal Act. Under the amending Act the owner of a leasehold estate under a lease made after the commencement of the principal Act is no longer to be treated as though he were the owner of the freehold, but is assessable on the unimproved value of his estate, with a deduction for the tax paid on the land by the owner of the freehold and any precedent leaseholder. The unimproved value of a leasehold estate is the present value of the annual value of the land calculated for the unexpired period of the lease at  $4\frac{1}{2}$  per cent., according to prescribed tables of calculation, and the annual value of the land is  $4\frac{1}{2}$  per cent. of the unimproved value. Where a person, though not owning or leasing land, has the use, control, or occupation of land, he is deemed to be the lessee for life of the land so long as the use, control, or occupation continues. As it was found that the principal Act conferred greater benefits on beneficiaries under wills or settlements made prior to July 1, 1910, than was originally intended, the principal Act is amended by restricting these benefits and bringing them more into consonance with what was originally intended.

Among the minor amending Acts are the Audit Act, 1912 (No. 6), and the Commonwealth Inscribed Stock Act, 1912 (No. 40).

**Commerce.**—One of the most important Acts passed during the session of 1912 was the Inter-State Commission Act (No. 33). This Act provides for the establishment of the Inter-State Commission,—a body modelled on the lines of the Railway and Canal Commission of the United Kingdom and the Inter-State Commerce Commission of the United States of America. The Commission is to consist of three members, one of whom is to be of experience in the law. The appointments are for seven years, but the Governor-

General may suspend any Commissioner for misbehaviour or incapacity. A full statement of the grounds of suspension must be laid before Parliament within seven days, if Parliament is sitting, or, if not sitting, within seven days of the next meeting of Parliament. The suspended Commissioner shall be restored unless each House of Parliament within forty days passes an address praying for his removal on the grounds of proved misbehaviour or incapacity. The Chief Commissioner is to be paid a salary of £2,500 a year, and the other two members each £2,000 a year. The powers of the Commission, which are partly inquisitorial and partly judicial, are very extensive, being more extensive than those of the kindred commissions in the United Kingdom and the United States.

The Commission is charged by the Act with the duty of investigating all matters affecting (a) the production of and trade in commodities; (b) the encouragement, improvement, and extension of Australian industries and manufactures; (c) markets outside Australia, and the opening up of external trade generally; (d) the effect and operation of any Tariff Act or other legislation of the Commonwealth in regard to revenue, Australian manufactures, and industry and trade generally; (e) prices of commodities; (f) profits of trade and manufacture; (g) wages and social and industrial conditions; (h) labour, employment, and unemployment; (i) bounties paid by foreign countries to encourage shipping or export trade; (j) population; (k) immigration; (l) other matters referred to the Commission by either House of the Parliament, by resolution, for investigation.

The Commission may also investigate all matters affecting (a) the extent of diversions or proposed diversions, or works or proposed works for diversions, from any river and its tributaries, and their effect or probable effect on the navigability of rivers that by themselves or by their connection with other waters constitute highways for inter-State trade and commerce; (b) the maintenance and the improvements of the navigability of such rivers; (c) the abridgment by the Commonwealth by any law or regulation of trade or commerce of the rights of any State or the residents therein to the reasonable use of the waters of rivers for conservation or irrigation; and (d) the violation by any State, or by the people of any State, of the rights of any other State, or the people of any other State, with respect to the waters of rivers.

The Commission also has jurisdiction to hear and determine any complaint, dispute, or question and to adjudicate upon any matter arising as to (a) any preference, advantage, prejudice, disadvantage, or discrimination given or made by any State or by any State authority or by any common carrier in contravention of the Act, or of the provisions of the Constitution relating to trade and commerce or any law made thereunder; (b) the justice or reasonableness of any rate in respect of inter-State commerce or affecting such commerce; and (c) anything done or omitted to be done by any State or by any State authority or by any common carrier or by any person in con-

travention of the Act or of the provisions of the Constitution relating to trade or commerce or any law made thereunder.

The Commission has power to grant general relief in any matter in which it has jurisdiction, to award damages, and to grant an injunction.

No appeal shall lie from the Commission, except an appeal to the High Court on a question of law only, but the Commission may, at the instance of any party to a proceeding, state a case in writing for the opinion of the High Court upon any question which in the opinion of the Commission is a question of law.

With regard to the proceedings before the Commission, the summoning of witnesses, the examination of witnesses, and other like matters, the Commission has all the powers which are conferred on a Royal Commission under the Royal Commissions Acts, 1902-12.

The Commission is required once in every year to make a report to the Minister for Trade and Customs containing a summary of the work done and investigations made and proceedings taken by the Commission during the preceding year, and such information and data collected by the Commission as it may deem of value for the determination of questions connected with any matter dealt with by the Commission under the Act, together with such recommendations as to further legislation as the Commission thinks expedient.

The Wood Pulp and Rock Phosphate Bounties Act, 1912 (No. 32), provides for the granting of bounties for the manufacture or production of wood pulp and rock phosphate and for granting rewards for the discovery of deposits or veins of rock phosphate suitable for making phosphatic manure.

The conditions for payment of the bounty in respect of wood pulp are: (a) it must be of merchantable quality; (b) it must have been manufactured in not less than the prescribed quantity and subject to the prescribed conditions; (c) it must have been manufactured from raw material, the product of Australia; and (d) it must have been manufactured by white labour only.

With regard to rock phosphate the conditions are: (a) at least 10,000 tons must have been produced from the one deposit; (b) it must have been produced subject to the prescribed conditions; (c) it must have been produced by white labour only; and (d) it must have been manufactured into marketable phosphatic manure in Australia.

The reward for the discovery of rock phosphate may be granted in respect of a deposit which is worked and produces 10,000 tons of rock phosphate which is used in the manufacture of marketable phosphatic manure.

Every person claiming any bounty must certify to the Minister administering the Act the conditions of employment and the rates of wages paid to any labourer employed other than members of his family. The Minister may apply to the President of the Arbitration Court or certain other prescribed persons

for a declaration as to what wages and conditions of employment are fair and reasonable for labour employed in the manufacture or production of the goods. If the Minister finds that the rates of wages and conditions of employment, or any of them, (*a*) are below the standard rates and conditions prescribed by an industrial authority, or (*b*) are below the standard rates and conditions applicable to the locality and agreed upon between representatives of associations of employers and employees registered under any Act, or (*c*) are below the rates and conditions declared to be fair and reasonable on application by the Minister, as hereinbefore stated, the Minister may withhold the bounty.

The Sugar Bounty Act, 1912 (No. 12), the Manufactures Encouragement Act, 1912 (No. 28), and the Bounties Act, 1912 (No. 34), amend the respective principal Acts with regard to rates of wages and conditions of employment, and contain similar provisions to those contained on this subject in the Wood Pulp and Rock Phosphate Bounties Act, 1912.

The Quarantine Act, 1912 (No. 15), amends the principal Act of 1908 by strengthening the powers conferred on the quarantine officials in order that they may more effectually cope with quarantinable diseases in persons, animals, or goods. Additional duties are cast on the masters of vessels arriving from overseas ports; as where a vessel has touched at any place proclaimed as quarantined the master must take all the precautionary measures which are prescribed by the regulations to prevent the introduction of a quarantinable disease into Australia. The master of an overseas vessel is required to bring from its overseas port of departure and from every overseas port of call a bill of health giving the prescribed information in respect of the port and of the sanitary conditions of the vessel and her crew and passengers while at that port. A quarantine officer has power to examine and order into quarantine any imported goods infected or likely to be infected with a disease affecting animals or plants, or which contain or appear to contain any insect or pest or disease agent.

Where a vessel is ordered into quarantine the owners of the vessel, in addition to the duties cast on them by the principal Act, are responsible for (*a*) the removal of the passengers and crew to the quarantine station; (*b*) the care and maintenance of the passengers and crew at the quarantine station; (*c*) the conveyance of the passengers from the quarantine station to their ports of destination; (*d*) the medical surveillance of persons released under quarantine surveillance.

The Sugar Excise Repeal Act, 1912 (No. 25), provides for the repeal of the excise duty on sugar. This Act is to commence on a day to be fixed by proclamation.

The Sugar Bounty Abolition Act, 1912 (No. 26), provides for the abolition of the bounty on the production of sugar, and also is to commence on a day to be fixed by proclamation.

(Both these Acts were proclaimed to commence on July 26, 1913.)



**Defence.**—The Defence Act, 1912 (No. 5), contains some important amendments of the principal Act. The most important relate to the compulsory training provisions. Power is given to prescribe compulsory drills, absence from which entails a penalty. A cadet who is convicted of an offence against the compulsory training provisions is not to be committed to gaol, but in default of payment of a pecuniary penalty is to be committed to the custody of a prescribed authority, who may detain the cadet in some place of military detention. Intoxicating liquors are not to be sold to cadets in uniform, and shall only be supplied to them by direction of a duly qualified medical practitioner. The Act also contains a number of amendments dealing with administration.

The Naval Defence Act, 1912 (No. 21), provides that persons employed on sea-going vessels may perform the year's or two years' training at one period of the year, and during such training shall be entitled to leave of absence from their ships. The Act also contains several minor amendments.

**Industrial Property.**—The Copyright Act (No. 20) repeals the Copyright Act, 1905, and adopts the British Copyright Act, 1911, which is contained in the schedule to the Act, with necessary modifications for the operation of the Act in the Commonwealth. The Act also contains provisions relating to the reciprocal protection of copyright and for the saving of copyright in works where copyright existed in the United Kingdom at or after the commencement of the Copyright Act, 1905, and before July 1, 1912, the date when the Copyright Act, 1912, is deemed to be in force. The special provisions contained in the Copyright Act, 1905, relating to summary remedies and to the registration of copyright are re-enacted. Registration is optional; but certain summary remedies are only made available to the registered owner.

The Trade Marks Act, 1912 (No. 19), amends the Trade Marks Act, 1905, and brings it more into line with the English legislation relating to trade marks. The main amendments are based on the English Trade Marks Act, and the legislation on this subject in the two countries is now practically uniform. The Act also contains some minor administrative amendments.

The Designs Act, 1912 (No. 14), extends the Designs Act to Papua; and also provides for the extension of the period of the registration of a design for two further periods of five years each, following in this respect s. 31 of the Patents and Designs (Amendment) Act, 1907, of the United Kingdom.

**Electoral.**—The Referendum (Constitution Alteration) Act, 1912, amends the Referendum (Constitution Alteration) Act, 1906-10, by extending to a referendum the provisions which by the Electoral Act, 1911, applied to absent voting. Postal voting at a referendum is abolished, and the wide absent-voting provisions which apply in the case of an election are extended to a referendum. As in the case of an election, every trades union, organisation, association, league, or body of persons which has, or person who has, within three months before the poll at a referendum, expended any money either in support of or in opposition to the referendum, must make a return of the

money expended. The proprietor or publisher of a newspaper is also required to make a return setting out the amount of matter in connection with a referendum inserted in the paper within three months before the poll in respect of which payment is made, the amount paid for same, and the persons or organisations authorising the insertion of the same. The Act also applies to a referendum the bribery and undue influence provisions which by the Electoral Act apply to an election.

The Referendum (Constitution Alteration) Act, 1912 (No. 2), is a further amendment of the principal Act. This Act provides for the distribution to the electors of a pamphlet, setting forth the arguments for and against the proposed law authorised by a majority of the members of both Houses, who voted for and against the proposed law. The arguments for or against a proposed law must not exceed two thousand words respectively.

**Royal Commissions.**—The Royal Commissions Act, 1912 (No. 4), which amends the Royal Commissions Act, 1902, confers wide and extensive powers on Royal Commissions. The power of a Royal Commission over witnesses is greatly strengthened. A witness must report himself from day to day unless or until excused by the President or Chairman. The President or Chairman may issue a warrant for the apprehension of any person, who has been summoned as a witness, failing to attend. The statements or disclosures made by a witness before a Royal Commission are not (except in proceedings for an offence against the Act) admissible in evidence against him in any civil or criminal proceedings. A Royal Commission is empowered to inspect any books or documents produced and to take copies and extracts therefrom of such matter as is relevant. Giving false testimony before a Royal Commission on any matter material to the inquiry is punishable with imprisonment for five years. Practising fraud on a witness or destroying books or documents required before a Royal Commission is punishable with imprisonment for two years. Preventing a witness from attending before a Royal Commission, injuring a witness, or dismissal of a witness by his employer for giving evidence before a Royal Commission is punishable with imprisonment for one year, or, in the two latter cases, a penalty of £500. Contempt of a Royal Commission is punishable with a penalty of £100 or imprisonment for three months, and if the President or Chairman is a Justice of the High Court, or a Judge of a Supreme Court, or District Court, he has all the powers of a Justice of the High Court sitting in open Court in relation to a contempt committed in face of the Court.

**Workmen's Compensation.**—The Commonwealth Workmen's Compensation Act, 1912 (No. 29), provides for the payment of compensation to workmen employed in the service of the Commonwealth for injuries suffered in the course of their employment.

The Act is based upon the English Workmen's Compensation Act of 1906.

For the purpose of the Act a workman means any person who has entered

into or works under a contract of service or apprenticeship with the Commonwealth, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing, but does not include (a) any person employed otherwise than by way of manual labour whose remuneration exceeds £500 a year; (b) an outworker; or (c) any member of the Naval or Military Forces of the Commonwealth while employed on active service.

A member of a family includes, in addition to the persons set out in the English Act, an adopted child and a mother-in-law.

If the claimant has a claim against any person for compensation under any other law he shall only be allowed compensation under the Act upon undertaking not to claim under that law.

The compensation payable to workmen is—

(a) Where death results from the injury: (i) if there are dependants wholly dependent, three years' earnings or £200, whichever is the greater, but not exceeding £500; (ii) if there are dependants, partially dependent, such sum as is agreed upon or fixed by arbitration; (iii) if there are no dependants, reasonable expenses of medical attendance and burial not exceeding £30;

(b) Where total or partial incapacity results from the injury, a weekly payment of 50 per cent. of the workman's average weekly earnings, not exceeding 40s., provided that if the workman is under twenty-one years of age and his earnings are less than 20s., 100 per cent. of his earnings not exceeding 10s.

**Immigration.**—The Immigration Act, 1912 (No. 38), which amends the Immigration Restriction Act, 1901-10, provides principally for the medical examination of intending immigrants. Power is given to establish medical bureaux at places outside the Commonwealth. An intending immigrant must, either prior to or at the time of embarkation, submit himself for examination as to his physical and mental fitness by a medical referee, who may issue a certificate of health, if satisfied that the person is of sound health. If the medical referee is not satisfied that the person is of sound health, he forwards his report to the chief medical officer in charge of the bureau, who may if he thinks fit issue a certificate of health, unless the person is suffering from certain prescribed diseases. Any person not possessing the prescribed certificate of health is deemed to be a prohibited immigrant, and may be prevented from landing. The master of a vessel carrying passengers to Australia is required to furnish a certificate by the ship's medical officer that he has examined each intending immigrant at least once during the voyage, and the medical officer is required to report all cases of intending immigrants who on the voyage are affected with certain prescribed diseases. An immigration officer may require an intending immigrant on his arrival to submit himself to another medical examination, notwithstanding that the immigrant has a certificate of health. The Act also extends the classes of

persons who may be deemed prohibited immigrants, and also makes minor administrative amendments to the principal Act.

**Judiciary.**—The Judiciary Act, 1912 (No. 31), amends the Judiciary Act, 1903-10, by increasing the number of Justices of the High Court of Australia from five to seven. The Act also provides that a full Court consisting of less than all the Justices shall not give a decision on a question affecting the constitutional powers of the Commonwealth, unless a majority of all the Justices concur in the decision. In other cases, when the Justices sitting as a full Court are divided in opinion, the question is to be decided according to the decision of the majority, if there is a majority; but if the Court is equally divided, (a) in the case where the decision of a Justice of the High Court, or of a Supreme Court of a State or a Judge thereof, is called in question on appeal or otherwise, the decision appealed from is to be affirmed; and (b) in any other case, the opinion of the Chief Justice or of the senior Justice present is to prevail.

**Civil Procedure.**—The Service and Execution of Process Act, 1912 (No. 18), amends the principal Act by repealing the Act of 1905, by extending the time for entering appearance in certain cases, and by extending the provisions of the principal Act to the service of a summons, or the execution of a warrant, issued in respect of a complaint for the desertion of a wife and children.

## 2. NEW SOUTH WALES.

[Contributed by N. DE H. ROWLAND, ESQ.]

Public Acts passed—76.

The list of Public Acts passed by the New South Wales Legislature during 1912 is swelled considerably by a batch of twenty-four consolidating statutes, which represent a large part of the work of this character rendered necessary by the amending legislation since the last period of consolidating activity (1897-1902). Another considerable portion is mainly concerned with the construction of railways and other local works.

**Education.**—The Bursary Endowment Act (No. 14) is intended to provide for bursaries to be held at any State school, registered secondary school, or the University. An important feature is that it brings into the scheme secondary schools which are not State schools, and which are in many instances associated with particular religious bodies. The Act establishes a bursary fund, to be fed by parliamentary appropriation and by private donations. This is controlled by a Board with representatives of the University, the Department of Public Instruction, and the secondary schools registered under the Act. The Board establishes and allots bursaries, prescribes the conditions under which they may be held, and also prescribes the conditions under which secondary schools may be registered and so brought within the scheme.

**Teachers' College.**—Act No. 47 provides for constructing, maintaining, and governing a training college for teachers. The land and buildings are vested in the Minister for Public Instruction, and the college is to be governed by him.

**Closer Settlement.**—No. 74, with a view to closer settlement, provides for the resumption (with compensation) of improvement and scrub leases, *i.e.* Crown lands which have been let for a considerable period under certain types of lease authorised by the Crown Lands Act. Such leases are to be within 15 miles of an existing or sanctioned railway.

**Criminal Appeal.**—Act No. 16 provides a system of appeals from convictions on indictment, and is modelled on the English Act. It does not affect the pardoning power of the Governor, but where a petition is made for pardon or for review of other sentences than death, the Minister for Justice may refer the matter to the Court and obtain its opinion.

**Crown Lands.**—An Amendment Act (No. 6) provides a scheme of perpetual leasehold, with periodic re-appraisement of rent, and subject (except in special circumstances) to the obligation that the holder shall reside on the property. The scheme includes "homestead farms," "suburban holdings," and lands within "irrigation areas"; and in general prohibits any person from acquiring more than a maintenance area. Besides the perpetual leasehold, the Act provides for leases for agriculture or grazing, with a term of forty-five years, a low rent for the first fifteen years ( $1\frac{1}{4}$  per cent. on capital value), and a right during the last five years to convert into a "homestead farm."

Another Amending Act (No. 53) was passed to facilitate the consolidation of the Crown Lands Acts by first getting rid of anomalies, discrepancies, etc. The necessity for this preliminary Act is significant of the formidable task involved in the consolidation, which has recently been submitted to Parliament, but not yet enacted.

**Fruit Cases.**—Act No. 72 touches both the local and the export trade. The cases are to be of regulation size, either new or clean for local sales, and new for export. They are to bear maker's name and address and a guarantee as to size.

**Gas Act.**—No. 71 is based on the English Model Gas Bill, 1910. It contains in addition to provisions substantially similar to those of the English Bill some special provisions to enable the three companies at present affected by the Act to capitalise their reserves and to increase their capital.

**Housing.**—Act No. 7 represents an experiment by the State in Garden Suburb schemes on the outskirts of Sydney. The idea is for a State Board to appropriate the land, plan the suburb, and build the houses. The buildings may be let for terms not exceeding seven years at a rent to provide 4 per cent. and cover in addition insurance, rates, taxes, and repairs, a proportion of management expenses and contribution to a sinking fund. The houses may also be sold, but no person is to buy more than one

house with a quarter of an acre, and in general he must buy it for his home.

**Income Tax.**—The main object of the Income Tax Management Act (No. 11) was to get an increased revenue from the taxation of incomes. Prior to the Act incomes derived from personal exertion were exempt up to a limit of £1,000, and there was no graduation. Under the present Act the exemptions allowed are £300, £50 for each child under eighteen wholly maintained by the taxpayer, life insurance premiums up to £50; the tax is payable in accordance with a graduated scale in which a distinction is drawn between income from personal exertion and income from property and between absentees and residents.

**Industrial Arbitration.**—Act No. 17 is for the time being the last of a series of attempts to deal with the problem of regulating industrial conditions. It establishes a Court of Industrial Arbitration, presided over by a judge with the status of a judge of the Supreme Court. It also provides for Industrial Boards, Conciliation Committees, an Industrial Registrar, and Industrial Magistrates, and for the repression of lock-outs and strikes.

In addition to an appellate and supervisory jurisdiction the Court may exercise the powers of an Industrial Board, or of its chairman, of the chairman of a Conciliation Committee, of an Industrial Registrar, and of an Industrial Magistrate. The decision of the Court is to be final and even a writ of prohibition or certiorari is not to lie with respect to any industrial matter or any other matter which on the face of the proceedings appears to be or to relate to an industrial matter.

In addition to the ordinary meaning, industrial matters include wages, hours of employment, sex, age, qualifications, or status of employees, mode, terms, and conditions of employment, employment of children or young persons, but not preference to members of industrial unions (except under certain safeguards), established usages, and interpretation of industrial agreements or awards.

The Industrial Registrar may register industrial unions of employers and employees, subject to appeal to the Court, and subject also to cancellation for good cause, or on the request of a majority under a secret ballot, as well as if the union instigate or aid in a lock-out or strike.

The Boards are to be constituted for three years by the Minister on the recommendation of the Court, under the various Board designations in Schedule 1 (*e.g.* Building Trades, Government Railways); for any one or more of the industries mentioned in the schedule, the industries or groups of industries may be added to or re-arranged. A chairman, paid by fees, is appointed for each group by the Minister on the recommendation of the Court. The other members, who are also paid by fees, may be two or four as the Court recommends, in general half from employers and half from employees, the Minister making the actual appointment.

A Board may make an award dealing, *inter alia*, with minimum wage,

hours, overtime, holidays, apprentices and improvers, industrial matters, and preference to unionists. Preference is to be cancelled by the Court if a substantial number of the union take part in or instigate strikes, and may be suspended if any members do the like. The award is binding for a period of not more than three years, but parties may on certain conditions apply for a variation or re-hearing by the Court. Wages of Government employees are not to be less than those of other employees merely because of the permanent nature of the work or the existence of privileges. Aged, infirm, and slow workers may obtain permits to work for a smaller wage. The award is binding on all persons in the industry within the locality, subject to appeal to the Court. The Crown may intervene where public interests are affected. It is the chairman's duty to bring the parties to agreement if possible. In case of disagreement he has the deciding vote. The powers of examining witnesses, inspecting books and admitting evidence, which is to be on oath, are wide. Questions of jurisdiction are decided by the chairman subject to appeal to the Court or may be submitted to the Court. [In practice barristers are commonly appointed chairmen.] No advocate or agent shall be heard without consent of the Court or chairman, unless he is *bona fide* engaged in one of the industries concerned.

In the case of certain colliery districts and metalliferous mining districts employing more than 500 men, where the industrials are registered as an industrial union, a Conciliation Committee may be appointed consisting of two or four members, chosen half by employees and half by employers, with a chairman chosen by the committee, or, in default, appointed by the Governor in Council. They may inquire into industrial matters in connection with coal or metalliferous mining in their district, and if they come to an agreement (the chairman having a vote), the agreement is to be filed and have effect as an industrial agreement, *i.e.* a collective bargain in writing between industrial unions or an industrial union and employers, which may cover a period of not more than five years, and may be registered and enforced under the Act. The Minister may also appoint such a committee for callings other than the above where more than 500 men are employed. A special commissioner may be appointed to summon a conference where a strike or lock-out is likely, where there is no board, or where a preliminary agreement is desirable.

A penalty not exceeding £1,000 may be imposed for a lock-out, and not exceeding £50 for a strike. In the latter case the penalty is to be a charge on future wages. The Court may order an offender's union to contribute not more than £20 of the penalty.

If a union instigates or aids a strike a penalty not exceeding £1,000 may be imposed, its registration cancelled or suspended, and awards (with the consent of the other parties) cancelled.

The Court may grant an injunction against a lock-out or strike. Disobedience is a misdemeanour, punishable with six months' imprisonment.

The full wages prescribed by an award must be paid, and (notwithstanding any agreement between the parties) may be recovered within six months before an industrial magistrate, or in a District or Small Debts Court. Appeal lies to the Industrial Court.

Breaches of award are made punishable, and continuing breaches may be prevented by injunction. Proceedings may be taken by the Minister, the employer, or the secretary of a union. Payment by way of compromise to a union secretary is not allowed except by order or consent of the Industrial Registrar or Magistrate.

Employees are not to be dismissed merely because of union membership, or absence on Board work, or being entitled to the benefit of an award or agreement. The onus is on the employer, a penalty is provided, but there is to be no prosecution except by leave of the Court.

Provision is made for recovery of union levies and fines, and for the enforcement of orders of the Court, Registrar, and Industrial Magistrate. Union property is available to answer orders.

Industrial inspectors may be appointed by the Governor in Council to inspect premises and investigate industries and report breaches to the Minister. Employers must keep time and pay sheets and exhibit a copy of the award upon their premises.

Employers and employees must give at least twenty-one days' notice of an intended change affecting conditions of employment with respect to wages or hours or prices of piecework.

Contracts or combinations in restraint of trade in necessary commodities to the detriment of the public are punishable with a penalty not exceeding £500. Monopolising or attempting to monopolise any part of the trade of the State with intent to control, to the detriment of the public, the supply or price of any necessary commodity, is punishable by a similar penalty. Necessary commodities include (a) 'coal; (b) gas for lighting, cooking, or industrial purposes; (c) water for domestic purposes; and (d) any article of food the deprivation of which may tend to endanger human life or cause serious bodily injury.

**Irrigation.**—No. 73 is an attempt to solve the great problem of Australian agriculture in non-coastal areas, viz. the conservation of water and irrigation, more especially with reference to a comprehensive scheme at Burrenjack on the Murrumbidgee River. The Act provides for the setting apart of irrigation areas under the management of a commissioner who is removed from political control. He is the constructing authority with respect to such areas; all lands, buildings, and plant therein vest in him, and he is entrusted more particularly with the duty of supplying water to occupiers and collecting the revenues of the area.

**Payment of Members.**—Under the previous law members of the Legislative Assembly (the lower House) were entitled to a salary of £300 per annum. The Parliamentary Representatives' Allowance Act (No. 19), passed



without putting the matter before the electors, raises the salary to £500 per annum, and gives the leader of the opposition £750. Those members who have conscientious scruples may neglect to draw the salary, which reverts to the Treasury upon a lapse of seven days after the close of any Parliament.

**Pensions.**—The Public Service Amendment Act (No. 56) makes provision for gratuities on retirement in the case of public servants employed in the Lunacy and Prisons Departments who did not come under existing schemes of retiring allowances.

**Elections of Senators.**—The conduct of elections to the Federal Senate is by virtue of the Commonwealth constitution in the hands of the various States. An amending Act (No. 75) modifies the existing law so that, if an election for the Senate coincides with an election for the House of Representatives, they may be held under the same conditions as to day and hours of polling and time for return of writ.

**Finance of State Trading.**—The States having embarked in several industrial undertakings, such as brick-works, lime-works, a clothing factory, and the like, the Special Deposits (Industrial Undertakings) Act (No. 22) provides machinery for computing the capital cost of the undertakings and keeping the accounts separate in the Treasury, and for transference of profits to consolidated revenue.

**State Coal Mines.**—Act No. 70 provides for the setting apart of Crown lands and the acquisition of private lands for the purpose of working State coal mines thereon, to supply coal to Government departments and outsiders. The Commissioner for Railways must purchase State coal, other things being equal. The capital for working the mines is to be appropriated by Parliament, and receipts are to go into consolidated revenue.

**Supreme Court and Circuit Courts.**—The Supreme Court in New South Wales has different jurisdictions, viz. common law, equity, bankruptcy, probate, and divorce. An amending Act (No. 9) provides that an existing judge in any jurisdiction may be appointed to fill a vacancy in another jurisdiction. It also provides for an indefinite increase in the number of puisne judges, but a resolution of both Houses of Parliament is required if there are already seven or more puisne judges. The power of appointing a solicitor as judge in bankruptcy is removed, and all judges must now be barristers of five years' standing. An Acting Chief Justice may be appointed from among the puisne judges.

The Act also makes the circuit work more elastic. Hitherto there had been fixed circuit towns, at which the Circuit Courts, nominally distinct, sat on definite dates. Under the Act a sitting of the Supreme Court may be held at any town and at any time proclaimed by the Governor. The Court has also been given power to deliver any gaol in New South Wales.

The Act further provides for the relegation to the Prothonotary of certain chamber work hitherto done by the chamber judge.

**Trustees' Audit.**—Act No. 21 provides that the Auditor-General shall, at

the request of the Treasurer or any Minister, audit certain accounts specified in the schedule, including those of persons paying Crown royalties, trustees of lands set apart for public purposes, subsidised institutions of various kinds, and Pastures Protection Boards.

**Sydney University.**—The University Amendment Act (No. 52), in the first place, remodels the constitution of the Senate. Previously there were sixteen elective Fellows, elected for life by the graduates, together with not fewer than three nor more than six *ex-officio* Fellows, who were professors in such branches of learning as the Senate from time to time determined. In practice these *ex-officio* Fellows were the respective Deans of the four faculties of Art, Law, Medicine, and Science. Under the present scheme, in addition to the present Chancellor and Vice-Chancellor, whose life tenure was continued, there are to be twenty-four Fellows, four appointed by the Governor in Council, one elected by the Legislative Council, one elected by the Assembly, five representatives of the teaching staff (*viz.* Chairman of Professorial Board, elected by the Board, and four Fellows, elected one by each of four faculties), ten elected by graduates, and three co-opted by the other Fellows. The Fellows hold office for five years, with the exception of the staff representatives, who hold office for two years. The inclusion of the Fellows appointed by the Governor or elected by the Council and Assembly is attributable to the fact that the University receives a considerable subsidy from the State. Incidentally postal voting, in the election of Fellows by the graduates, has been introduced.

Further important changes are (1) the increase of the statutory subsidies from £10,000 to £20,000 per annum; (2) the provision of public exhibitions in the ratio of 1 for every 500 of the persons in New South Wales between the ages of seventeen and twenty, entitling the holders to free education; (3) a certain automatic increase of the subsidy with the growth of the number of exhibitions; (4) the establishment of evening tutorial classes for students not proceeding to a degree—this, in addition to the existing evening lectures which are designed for students proceeding to a degree; and (5) the admission of students on a leaving certificate granted by a Board composed of representatives of the University and the Department of Public Instruction to students leaving a secondary or high school or a school registered under the Bursary Endowment Act, 1912. The certificate, however, is only to be given to a student who has passed in the subjects and at the standard prescribed by the Senate for matriculation.

### 3. QUEENSLAND.

[Contributed by J. WALSH, ESQ., B.A.]

Acts passed—Public, 27; Private, 7.

**Finance.**—Nos. 3, 4, 7, and 18 are Appropriation Acts. No. 1 amends 1 Geo. V. No. 14 and 2 Geo. V. No. 23 by altering the rate of interest

payable on Government debentures or inscribed stock from  $3\frac{1}{2}$  per cent. to 4 per cent. No. 2 authorises the raising of money under any Government Loan Act, as and when occasion may arise, by the issue of short-dated Treasury bills, debentures, or other form of Government securities having a currency not exceeding five years from the date of the issue thereof and bearing interest at a rate not exceeding 4 per cent. No. 8 amends 58 Vict. No. 31 by providing that stock issued under that Act (the Government Savings Bank Stock Acts, 1894-7) shall bear interest at a rate not exceeding 4 per cent. No. 12 authorises the acceptance by the State Treasurer of the sum of £1,000,000 from the Commonwealth as a fixed deposit for one year from March 5, 1912, bearing interest at the rate of  $3\frac{1}{2}$  per cent.

**Mining.**—No. 5 amends 1 Geo. V. No. 24 by providing for the issue of "winding licences," which shall entitle the holder to operate or drive the winding machinery in mines. Any person who drives winding machinery in a mine and does not hold a winding licence is guilty of an offence. The Act also makes provision that the owner, agent, or manager of a mine who proposes to work coal under or near a road, permanent water, or natural water-course shall notify his intention to an Inspector, who may prohibit such working. The owner may object in writing to the Minister, who may confirm, cancel, or modify the prohibition.

No. 6 amends 62 Vict. No. 24 with respect to prospecting and mining for coal and mineral oil. The Act provides for the discretionary issue of licences to occupy land for twelve months to persons desirous of searching for coal and mineral oil, for the renewal and cancellation of such licences, for the granting of mineral licences for a term not exceeding two years, and at a rental of sixpence per acre, and for priority in the grant of leases to the holders of licences. The surface rights of the leased lands are reserved, and a royalty is fixed on the coal and oil produced. Conditions as to working the land are imposed, with a right of exemption in certain cases, and provision is also made for the making of returns by the lessee, and for the power to inspect works by an officer appointed by the Minister for Mines.

No. 9 makes better provision for the drainage of those mines which are liable to influx of water. It provides for the appointment of Drainage Boards for a mining area with power to require drainage works to be paid for by mine-owners in the area. The Act also makes provision for contribution by owners of adjacent mines to the expense of obtaining drainage machinery, for the maintenance of plans showing drainage works, and for forfeiture by a mine-owner who fails to meet obligations imposed by the Act.

**Land.**—No. 13 authorises the Minister for Lands to make agreements with regard to Crown lands heavily infested with prickly pear, and not exceeding in any one case 100,000 acres. The agreements provide for the destruction of the prickly pear by the contractor, who may deposit an agreed sum of money as security for his performance of the agreement, enter upon the land, and if the land has been freed from the pear and kept free for a certain

period of time, shall be entitled to the fee simple of the land. The Act also makes further provision for the leasing for fifty years of land heavily infested with prickly pear.

**Mercantile.**—No. 14 prohibits the giving or advertising of trade coupons, or the giving or delivering of money or goods on presentation or production of trade coupons entitling the holder thereof or the person producing the same to demand and receive from any person, firm, or company any money or goods free of cost or at any reduced or alleged reduced price.

No. 27 amends the Registration of Firms Act, 1902.<sup>1</sup> Provision is made whereby incorporated companies are excluded from the operation of the Act, for yearly renewal of registration, payment of an annual fee, preventing the use of the word "limited" by firms, imposing an obligation to notify alterations in the constitution of firms, and to keep the registered firm name exhibited on the firm's place of business, when such exists, and allowing for registration of foreign firms by the holder of a power of attorney.

**Local Authorities.**—No. 16 amends 2 Ed. VII. No. 19, and repeals or amends 6 Wm. IV. No. 2, 30 Vict. No. 22, 38 Vict. No. 2, and 56 Vict. No. 33. It provides for polls of ratepayers on certain questions, for the removal of a chairman of a local authority, gives power to grant building leases of land owned by a local authority, provides for compelling the purchase of parks by a local authority at the bidding of ratepayers who have expressed their wishes by a poll, for directing the local authority to destroy pests, and for relieving the local authority of liability to owners of cattle poisoned as a result of the local authority's action in placing poison on highways for the purpose of destroying pests, provided that notice has been given by the local authority.

**Weights and Measures.**—No. 15 amends 6 Ed. VII. No. 19, prescribes a new list of standard weights and measures, and provides for the correction or destruction of incorrect or useless weights, measures, and weighing instruments.

**Holidays.**—No. 17 fixes the public holidays throughout the State, allows special holidays to be appointed, and gives power to alter the date of a holiday for special reasons.

**Labour.**—No. 19 is an Act to make better provision for industrial peace, and for purposes incidental to that object. S. 3 defines employee, employer, industrial agreement, industrial association, industrial dispute, industrial matters, strike, lock-out, etc. Industrial dispute does not include any dispute arising in connection with employment by or under the Crown; nor does the term employer include the Crown. S. 4 repeals the Wages Boards Acts, 1908-12.<sup>2</sup> An Industrial Court is constituted, to be presided over by a judge, removable in the same manner as a judge of the Supreme Court. The Court is given jurisdiction over all industrial matters and dis-

<sup>1</sup> 2 Ed. VII. No. 12. See *Legislation of the Empire*, vol. i. p. 523.

<sup>2</sup> 1 Ed. VII. No. 8 and 2 Geo. V. No. 30.

putes submitted (a) by the Minister or Registrar of the Court; (b) by an employer or employers of twenty persons; (c) by not less than twenty employees. Industrial Boards may be created on the recommendation of the Court, upon application by employers or employees, and shall consist of an equal number of representatives of employers and employees, presided over by a chairman nominated by the members of the Board, or, in default of such nomination, by the Minister. The chairman has power to administer oaths, to compel the attendance of witnesses, and to punish for refusal to attend as a witness or to produce documents or to give evidence. Awards of a Board, subject to appeal to the Court, have the force of law and remain in force for one year, and thereafter until amended or until a new award is made. Industrial agreements assented to by a majority of employers and employees, and approved by the Court, have the force of awards. Penalties are provided for breaches of an award, and provision is made for the issue of injunctions restraining further breaches. Discrimination on account of membership or non-membership of an industrial association is forbidden, and penalties are affixed in case of any person acting or inciting another to act in such a way as to bring about discrimination. Lock-outs and strikes are declared unlawful in the under-mentioned cases: (a) in connection with a public utility, until after a compulsory conference summoned by the judge has proved abortive, and thereafter until after fourteen days' notice has been given to the Registrar and after the Registrar has taken a secret ballot of employers or employees, as the case requires, and such ballot has resulted in favour of a lock-out or strike; (b) in any other case until after similar notice has been given to the Registrar and a similar ballot has resulted in favour of a lock-out or strike.

"Public utility" includes the manufacture of gas, the production or supply of electricity for light or power, the supply of water for domestic purposes, the supply of milk, flour, or bread for domestic consumption, the slaughter or supply of meat for public consumption, the getting, sale, or delivery of coal or other fuel for any purpose, the protection of buildings or other structures from fires, and the prevention and extinguishment of fires.

A penalty not exceeding £1,000 is imposed for a contravention of the law relating to lock-outs, and a penalty not exceeding £50 for contravention of the law relating to strikes. The penalty extends to those doing anything in the nature of or taking part in or aiding in or inciting to any strike or lock-out, and may be imposed upon persons or associations. The amount of the penalty in the case of a strike is made a charge upon wages, and an association taking part in a strike may be ordered to pay part of the penalty imposed upon a member of the association who takes part in the strike. The association may also incur a penalty not exceeding £1,000 for taking part or aiding in or inciting to a strike contrary to law, and in addition the Court may, with the consent of the other parties interested, cancel any award or agreement so far as it relates to the members of such association. Dis-

obedience to an injunction is enforceable by imprisonment, in the case of an individual, and the imposition of a penalty in the case of a company or association. Inspectors are to be appointed under the Act, provision is made for payment to employees on certain holdings, awards are to prevail over contracts, permission is given for the Crown to intervene in proceedings before the Court or a Board, representation before a Board or the Court by counsel or solicitor or salaried officer of an association, or by a member of Parliament, is prohibited. Wide powers of entry and inspection are given to the judge and to Boards, penalties are imposed for false statements, and the power of making regulations for the administration of the Act is given to the Governor in Council. The Court is given appellate jurisdiction in every award or any proceedings of a Board, and on an appeal may confirm, vary, or rescind an award of a Board or make a new award. The judge may act as a mediator in any industrial matter or dispute where it appears to him that his mediation is desirable in the public interest. He may also, when he thinks it desirable for the purpose of preventing or settling an industrial dispute, convene a compulsory conference, which, at the judge's discretion, may be held partly or wholly in public or in private. Refusal to attend a compulsory conference is visited with a penalty not exceeding £100. The Court is directed to endeavour to bring about amicable settlements of matters or disputes and agreements arrived at, though such settlements have the effect of awards. Awards are binding on (a) parties represented, (b) parties summoned to appear, (c) industrial associations connected with the calling to which the award applies, (d) members of associations bound by the award, (e) all employers or employees in the locality to which the award applies in the calling to which it applies, (f) all persons who, as employers or employees, are engaged in that calling in the locality. The decision of the Court is final in all cases.

No. 20 amends the Inspection of Machinery and Scaffolding Act of 1908,<sup>1</sup> and makes provision for "engineers'" and better provision for "engine-drivers'" certificates.

**Societies.**—No. 20 authorises the investment of the funds of friendly societies in the purchase of land and the erection of buildings and hospitals.

**Income Tax.**—No. 24 amends 2 Ed. VII. No. 10<sup>2</sup> by inserting a provision that when undistributed profits of a company standing to the credit of profit and loss account or of reserves are transferred to capital in any way or applied in any way in reduction of assets, such transfer or application shall be and is declared to have always been a declaration of dividends and a distribution of dividends within the meaning of the provisoes to sub-s. (iv.) of s. 7 of the amended Act.

**State Patents.**—No. 25 is to be read as one with 48 Vict. No. 13, and provides for the restoration of State patents, subject to the protection of users of the patents during the period when the patent had ceased, to

<sup>1</sup> 8 Ed. VII. No. 9.

<sup>2</sup> See *Legislation of the Empire*, vol. i. p. 519.

patentees whose patents have ceased owing to failure of the patentees to make prescribed payments within prescribed times.

**Agriculture.**—No. 26 is an Act to regulate the size and description of cases used in the sale and import of fruit. It makes provision, *inter alia*, for fruit cases to be clean and free from disease, for new cases to be used for export, for the case to show the name of the maker and a guarantee as to its capacity, and imposes penalties for breach of the above provisions, and for altering or tampering with cases or brands, as well as for the enforcement of penalties by inspectors or members of the police force.

**Public Service.**—No. 28 makes provision for a Superannuation Fund for the benefit of officers of the public service and their dependants. The scheme is based upon units of assurance, of annuities, and of incapacity allowances, and is compulsory in the case of officers under a certain age and voluntary as regards others. The rate of contribution depends upon the age of the officer and the number of units taken up, and is fixed by a schedule to the Act. Provision is made for a surrender value, for settlement of disputes, for actuarial investigations every five years, and for the appointment of a manager of the Fund, and for the administration of the Act by a Board consisting of five persons, three of whom are elected by the contributors, and two of whom are appointed by the Governor in Council.

**Liquor.**—No. 29 is in effect a codification of the Liquor Law of Queensland, and repeals almost the whole of 49 Vict. No. 18 and the whole of 50 Vict. No. 30, 59 Vict. No. 29, 4 Ed. VII. No. 5, and 4 Ed. VII. No. 10. Certain rights already acquired by licensees are preserved, and certain persons are exempted from the provisions of the Act, *e.g.* sellers of liquor in military canteens, chemists selling for medicinal purposes, wholesale spirit merchants and brewers, licensed auctioneers, etc. Licensing districts and Courts are constituted, the latter consisting, where practicable, of police magistrates sitting alone. Provision is made for annual and quarterly sittings of the Courts, for Registers of Licences, and the appointment of inspectors. The Governor in Council is given a power to prohibit the issue of new licences, the kinds of licences are described, certain persons are disqualified from becoming holders of licences, certain accommodation with sanitary conveniences, etc., is prescribed for town and country hotels, and the mode of application for the grant, renewal, transfer, and removal of licences is fixed. Provision is made for temporary licences and for objections to the grant of licences on their renewal, transfer, or removal. The owner of licensed premises is to be registered, and is protected in certain cases against the forfeiture of the licence.

The fees payable in respect of licences are based upon the annual value of the licensed premises and vary from £15 to £100, the annual value being assessed by the Court, which may require the owner or licensee to furnish particulars as to the rent and any premium paid or payable in respect of the licensed premises. The assessment continues to be the

assessment until redetermined by the Court. An additional fee of £20 is imposed for a second bar, and further fees for billiard and bagatelle licences. Provision is made for the transmission of the licence in case of the licensee dying or becoming insolvent or insane, and for the issue of a duplicate licence in case of loss of the original. The obligations, duties, and liabilities of licensees are set forth and include the exhibiting of signs, the keeping up of accommodation, the taking of sanitary precautions, and the maintenance of lights at night. Liquors are to be sold by imperial measure and the re-use of labelled bottles is prohibited.

The consent of the Court must be obtained before any security or charge is given or taken over the lease, licence, goodwill, interest, or other property of the licensee in or in connection with the licensed premises, and as a condition precedent to the giving of such consent, the Court may require to be satisfied that the terms and conditions of the security or charge or any collateral agreement between the same parties relating to the licensed premises—especially having regard to any stipulations for exclusive dealings in respect of supplies of liquor or goods—are fair and reasonable. No such terms are deemed to be fair and reasonable unless it is stipulated that (a) the prices to be charged to the borrower for any such liquor shall be fair and reasonable; and (b) the borrower shall not be restricted in the purchase of any liquor to any particular brand, kind, class, or quality; and (c) the borrower shall be at liberty, at any time, to discharge the whole of his liability to the person or body corporate to whom he is bound.

Among the restrictions on the sale of liquor appear the following: A licensed wine-seller is prohibited from selling any wine other than Australian wine. A licensed victualler or wine-seller who supplies or permits to be supplied any liquor to any female in any bar or in any room adjacent to a bar which is specially set apart for drinking purposes is liable to a penalty, and in the case of a third offence to forfeiture of his licence. Persons under twenty-one years of age are not to be allowed in a bar, prohibition orders may be issued against drunkards, no debts for liquor are recoverable, liquor is to be sold for money only, cheques for accommodation are to be presented for payment without delay.

Liquor is not to be supplied on licensed premises or permitted to be consumed on licensed premises except between the hours of 6 a.m. and 11 p.m. on the six business days of the week. Keeping a licensed house open for the sale of liquor on Sundays, or on Good Friday, or on Christmas Day, or during polling hours on any polling day at any general election of members of the State or Commonwealth Parliament or at a by-election for the district or at the taking of a local option poll for the district is prohibited, but a resident lodger may be served with liquor on licensed premises on the above-mentioned days with a meal between 12.30 p.m. and 2.30 p.m. Penalties are imposed on the licensee and on the person found drinking, and the manner of proving the offence is



facilitated. The penalties for selling or having adulterated liquor on licensed premises are severe, and include the recording of the conviction upon the licence, and the posting of a placard stating the conviction on the licensed premises. The licensee is protected from excessive liability for loss of a lodger's goods, and is allowed to dispose of the property of a lodger or guest who has left the premises without paying for his accommodation. Provision is made for the registration of spirit merchants and of bottlers and the inspection of their premises.

The law as to the registration and conduct of clubs is amended : to be registered, the following conditions, *inter alia*, must exist : (i) it must have eighty members if within a ten-mile radius of Brisbane Post Office and forty members elsewhere ; (ii) it must provide accommodation and meat and drink for members and their guests ; (iii) there must be a committee of management elected annually ; (iv) the subscription must be not less than £1 per annum ; (v) correct books must be kept ; (vi) no person under twenty-one years of age shall be admitted as a member or supplied with liquor. The hours at which liquor may be sold or consumed in clubs are the same as in the case of hotels. The supplying or keeping of liquor on the premises of unregistered clubs is prohibited.

**Local Option.**—From 1913 to the annual sittings of the Court in 1915 no new licences are to be granted unless the electors in a local option area carry a resolution in favour of the grant of new licences within the area. After the year 1915 local option votes may be taken upon any of the following resolutions :

- A. That the number of licences in this local option area shall be reduced by one-fourth of the existing number.
- B. That the number of licences in this local option area shall be further reduced by one-fourth of the number existing when Resolution A was carried.
- C. That the number of licences in this local option area shall be still further reduced by one-fourth of the number existing when Resolution B was carried.
- D. That the sale of intoxicating liquors in this local option area shall be prohibited.
- E. That new licences may be granted in this local option area.

A local option vote shall only be taken upon the request of one-tenth of the electors in an area, elector being defined as "a person qualified to vote at a Parliamentary election for the return of a member to the Legislative Assembly for an electoral district," *i.e.* on an adult suffrage basis. Resolution D may be submitted in the year 1925, or at any Senate election thereafter in any local option area, whether or not any of the other resolutions has or have been previously submitted to a local option vote in such area, and whatever may have been the result of any such vote. If Resolution E is carried, it

shall remain in force until the next Senate election, when, if not again carried, it shall cease to have any effect. Any resolution shall be carried if at least 35 per cent. of the electors of the area have voted at the poll and if, in the case of Resolutions A, B, or C, the majority of the votes given at the poll has been given in favour of the resolution; or, in the case of Resolutions D and E, at least three-fifths of the votes given at the poll have been given in favour of the resolution. Votes on Resolutions B, C, or D shall not be requested or taken until the Resolution A, B, or C respectively have been carried. A vote on Resolution E may be taken with a vote on Resolutions A, B, C, or D. If Resolution A or B or C, having been carried, has been subsequently reversed by the carriage of Resolution E, then in the next local option vote, the vote may be taken either on the resolution which has been reversed or on the next succeeding resolution in alphabetical order, or on E, or on all or any two of these resolutions. If D has been carried, then, in the next vote, the vote may be taken only on E. If D is carried and subsequently reversed by the carriage of E, further votes shall only be on D or E, as the case may be. When any resolution other than E has been carried, it shall be in force until another resolution is carried in the area. Effect shall be given by the Court to the resolutions which have been carried and the determination of the Court is final. Where A or B or C is carried, the Court shall cause a classification of the licensed premises in the area to be made as follows: the classification shall include licensed premises as to which the following conditions or any of them apply: (a) there have been, within the previous three years, three convictions for one of certain enumerated offences or one conviction for three of such offences made against the same or different licensees of the same premises; (b) there has, within the said three years, been a conviction of any licensee of the premises for any one of the said offences; (c) the premises are an inconvenience or a nuisance or insufficiently provided with proper sanitary conveniences. In making the reduction the Court shall (1) consider the convenience of the public and the requirements of the locality; (2) subject thereto, deal in order with licences to which the paragraphs (a), (b) and (c) above mentioned apply. When the Court has determined that a licence shall cease, it shall cease and be void at the expiration of eighteen months after the expiration of the period for which it was granted and shall not be renewed. If Resolution D is carried every licence within the area shall cease within a similar period of eighteen months and thereafter until E is carried the sale or delivery of liquor within the area is prohibited with certain exceptions, *e.g.* methylated spirits may be sold for use in the arts or manufactures or as a fuel; liquor may be sold for medicinal purposes on the prescription of a medical practitioner; brewers and distillers may sell to persons outside the area. Where as a result of a vote a licence becomes void, then, if the conditions of paragraph (a) above mentioned apply, the lessee or lessor may within fourteen days determine the lease by giving fourteen days' notice; otherwise, the rent of the premises may, at the instance

of the lessee, be fixed by arbitration. There is no provision for compensation where licences become void owing to the operation of the Act.

*Railway Refreshment Rooms.*—In the case of railway refreshment rooms which are licensed premises, liquor may be sold only within a reasonable time before or after the arrival or departure of a train, and during a time when licensed premises are directed to be closed liquor shall only be sold or supplied to passengers producing a ticket or authority authorising them to travel by railway for a journey of at least twenty miles beyond the station at which the rooms are situated. No licence for such rooms shall be in force in an area in which Resolution D is in force.

*Rabbits.*—No. 30 continued the Rabbit Boards Acts, 1896–1905, in force until the end of the year 1913.

*Police.*—No. 32 makes provision for the mode of appointment and vacation of office of Commissioners of Police and for the salary and superannuation allowance of the present holder of that office.

Among the Acts described as private are several of public interest.

*State Undertakings.*—No. 10 gives power to the Board created under the Metropolitan Water and Sewerage Act of 1909<sup>1</sup> to construct a tramway from Tivoli Railway Station to Mount Crosby upon the gauge upon which the State railways are constructed and of equal strength and durability to such railways, and to carry passengers, goods, etc., thereon at rates fixed by by-laws of the Board. The liability of the Board is to be no greater than that of stage coach proprietors and common carriers in Queensland.

No. 21 authorises the Treasurer to construct waterworks at Thursday Island notwithstanding the cost of such works is estimated to be greater than the cost mentioned in 2 Geo. V. No. 10.

No. 11 resumes certain lands known as the Exhibition Lands at Brisbane, and provides that the lands shall be reserved for public purposes and may be leased to the National Agricultural and Industrial Association of Queensland.

No. 22 enables the Council of the City of South Brisbane to borrow a further sum of £40,000 beyond that provided for by the City of South Brisbane Loan Acts, 1901–10, and validates an agreement entered into on September 12, 1907, between the Council of the City of South Brisbane and the Treasurer of Queensland and others.

No. 31, the Wee Macgregor Tramway Agreement Act of 1912, is an interesting piece of legislation. It empowers the Commissioner for Railways, on behalf of the Government of Queensland, to enter into an agreement with the Macgregor Cloncurry Copper Mines, Ltd., by which the company are to construct a tramway from a Government railway to a terminus at or near the company's mine at Wee Macgregor. The agreement shall contain provisions some of which are as follows :

No person is to be employed in the construction of the tramway

<sup>1</sup> 9 Ed. VII. No. 12.

- who has not first obtained a certificate that he is able to read and write from dictation words in the English language.
- The work is to be completed at the expense of the company and to the satisfaction of the Commissioner.
- The Commissioner is to supply such material as is at his disposal, of which he shall render an account to the company, and the company may either rent or purchase it.
- The tramway may be forfeited for non-performance of the agreement.
- The company is to render account of the total cost of construction.
- The Commissioner may at any time take over the tramway on paying the cost.
- The company may be permitted to carry passengers, goods, etc., at fares, rates, and charges not exceeding 25 per cent. more than the amount payable in respect of similar services on the State railways.

An arbitration clause for the settlement of disputes.

**Evangelical Lutheran Church.**—The Evangelical Lutheran Church (Toowoomba) Land Sale Act of 1912 is an Act to enable the surviving trustees of an allotment of land in the city of Toowoomba, held in trust for the erection thereon of church buildings in connection with the Evangelical Lutheran Church, to sell the same and apply the proceeds towards other Church purposes.

#### 4. SOUTH AUSTRALIA.<sup>1</sup>

[Contributed by A. BUCHANAN, ESQ.]

**Finance.**—The Governor's Appropriation Act Amendment Act (No. 1087 of 1912) provides that when the Parliament is not in session at the commencement of the financial year, and the Governor makes provision for the public service by an appropriation under the principal Act, the amount so appropriated may be recouped out of supplies subsequently voted by Parliament to the intent that the Governor's power of appropriation under the principal Act shall not be curtailed by such appropriation.

**Crown Lands.**—The Crown Lands Act Further Amendment Act (No. 1109 of 1912) makes numerous amendments in the Crown Lands Acts, 1903<sup>2</sup> to 1911.<sup>3</sup> The power of granting perpetual leases and agreements is extended to certain Crown Lands outside of declared hundreds (s. 3), provisions for forfeiture of agreements for non-payment of rent are

<sup>1</sup> The legislation of the year 1912, being that of the second Session of the twenty-first Parliament.

<sup>2</sup> No. 870 of 1903. See *Legislation of the Empire*, vol. ii. p. 27.

<sup>3</sup> No. 1068 of 1911. See *Journal*, vol. xiii p. 368.

made more stringent (s. 4), the power to resume for town sites and other public purposes is enlarged (s. 5), the limitation of homestead blocks to an unimproved value of £100 is removed (s. 6), the limit of value of blocks into which closer settlement lands are to be cut up is raised from £2,000 to £4,000, and in the case of grazing lands on which the value of the improvements would be disproportionate the limit is abolished (s. 7); the conditions as to the value of closer settlement land which may be held by one person are liberalised (s. 8), but in such cases sub-letting without consent is prohibited as well as transferring (s. 9). Further provisions are made for the surrender and consolidation of leases and agreements (ss. 10 and 11), and as to the circumstances under which transfers will be allowed (s. 12), for gradual clearing until three-quarters of the area to be made available for cultivation is cleared (s. 13). Extended powers are given to resume for public purposes (s. 15), and to afford relief in cases of hardship (s. 22). Town lands may be sold subject to a condition against alienation within six years (s. 28), and the number of town lots sold to any one person may be limited (s. 29). Future leases and agreements, except those under Part XI. of the principal Act, or which comprise less than 250 acres, are to be subject to the reservation of at least 5 acres out of every 250 acres for the growth of timber (s. 30).

The Irrigation and Reclaimed Lands Act Further Amendment Act (No. 1108 of 1912) empowers the Commissioner administering the Act to purchase pumping machinery and construct irrigation works and channels in a proclaimed irrigation area (s. 4), distribute water (s. 5), and strike and levy annual water rates (s. 6), supply water by measure (s. 8), if supply insufficient to reduce proportionally, with power to favour orchards and vineyards (s. 9), and vary order of priority of supply (s. 10), without being liable for damages (s. 11). The Commissioner may expend not exceeding £15 per acre in fencing, clearing, and grading lands within an irrigation area, and treat the cost, less £15 per centum to be paid by the lessee or prospective lessee, as a loan on mortgage (ss. 12-15). Partners may hold not exceeding in all 150 acres within an irrigation area, being not more than 50 acres for each partner, and residence by one partner shall suffice (s. 16).

The Closer Settlement Act Further Amendment Act (No. 1103 of 1912) extends the power of taking lands for closer settlement to lands comprised in any Crown lease which might, if it had been freehold, have been acquired for such purposes otherwise than as being a large estate (s. 4).

The Advances to Settlers on Crown Lands Act Further Amendment Act (No. 1105 of 1912) enables the Treasurer to fix from time to time the rate of interest payable on future advances (s. 3), instead of the rate of £5 per centum provided by the principal Act (s. 4). The Commissioner of Crown Lands may, on the application of the settler, make improvements and treat the cost thereof as an advance (s. 7), and the restriction upon the purposes for which advances may be made is removed (s. 8).

**State Loans.**—The State Advances Further Amendment Act (No. 1100 of 1912) raises the rate of interest at which the State Bank may issue mortgage bonds from £4 to £4 10s. per centum (s. 3), provides that in future bonds shall be issued with a fixed currency of not more than forty years (s. 5), authorises the surrender of outstanding bonds on indeterminate currency, and the issue in lieu thereof of bonds of same face value, and bearing same rate of interest, but with a fixed currency (s. 6). The Treasurer is empowered to make to the State Bank from time to time temporary advances at call not exceeding at any time £50,000 for the purpose of State Advances (s. 8). A fund called "The Loan to State Bank Fund" is constituted of moneys to be raised by the Treasurer by the sale of inscribed stock or Treasury bills, with not exceeding thirty years' currency, and bearing interest at not exceeding  $4\frac{1}{2}$  per cent., not exceeding in any one financial year £400,000 or in all at any one time £3,000,000, to be from time to time applied by the Treasurer in purchasing or taking up from the Bank mortgage bonds for such amounts as are required by the Bank within the limits prescribed by s. 28 of the principal Act (s. 9), and the State Bank is empowered to provide a sick and invalid fund and a superannuation fund for the benefit of its officers and servants (s. 15).

The Advances for Homes Act Further Amendment Act (No. 1096 of 1912) provides that instead of the uniform rate of interest at 5 per centum fixed by the principal Act, the Treasurer may from time to time fix the rate of interest to be paid on loans under the principal Act, and prescribe corresponding tables for repayment of principal and interest by instalments (s. 3).

**Railways.**—The Railways Standing Committee Act (No. 1089 of 1912) provides for the appointment as soon as possible after the commencement of each Parliament of a Joint Committee of six members (s. 3), balloted for, two by the Legislative Council and four by the House of Assembly, and to hold office until their successors are appointed by the next Parliament (s. 4), one of whom is to be appointed by the Governor to be Chairman (s. 7), and four of whom are to constitute a quorum for ordinary purposes, and five a quorum to consider reports by the Committee (s. 8). In addition to their salaries as Members of Parliament (s. 11), and to travelling expenses (s. 10), attendance fees are to be paid to the chairman of £1 11s. 6d. and others of £1 1s. for each meeting, provided the aggregate attendance fees in any one financial year (s. 9) shall not exceed £1,200. A secretary and other necessary officers may be appointed (s. 14). A member is not to act in relation to any proposed railway or work in which he has a direct pecuniary interest (s. 15). The Committee may sit in recess and in the interval between Parliaments (s. 16) and must keep full minutes (s. 17). Power is given to the Committee to enter and inspect all necessary places, summon and examine witnesses on oath and compel production of documents (s. 19) and to call in the aid of assessors (s. 21). The function

of the Committee is to consider and report upon the railways and other works referred to them, having regard to the stated purpose thereof, its necessity or advisability, its expected revenue-earning capacity (if any) and its present and prospective public value (s. 22). No future railway is to be commenced until after it has been referred to and reported upon by the Committee and the House of Assembly has declared by resolution that it is expedient that it should be carried out (s. 23), and an Act has been passed for its construction (s. 26). Any proposed work the estimated cost of which will exceed £20,000 is to be referred to the Committee for report by the House of Assembly, and the like consequent provisions shall apply as in the case of railways (s. 27). When Parliament is not in session the Commissioner of Public Works may refer any proposed railway or other work to the Committee, who, however, are not to report thereon until the matter has been referred to them by one of the Houses of Parliament (s. 28). The Committee is to take over the functions of any pre-existing Railway Committees or Commissions which have not finally reported and continue and complete their work, and need not take further evidence unless deemed necessary (s. 30), and a succeeding Committee under the Act shall in like manner complete any matters not completed by the out-going Committee (s. 30). The Committee is, before the commencement of each session of Parliament, to make a general report to the Governor of their proceedings (s. 31).

The South Australian and Victorian Border Railways Act (No. 1097 of 1912), subject to the passing of a like Act in Victoria, approves and ratifies an agreement made between the respective Railway Commissioners of the two States for the construction and working of connecting lines of railway extending across the border between the States.

**Industrial Courts.**—The Industrial Arbitration Act (No. 1110 of 1912) creates the "Industrial Court" as a Court of record (s. 8 [1]), to be constituted of the President or Acting President sitting alone unless otherwise provided by the Act (s. 8 [5]). The President appointed must be either a judge of the Supreme Court or a person eligible for appointment as a judge (s. 8 [2]), and may from time to time, when judicial assistance is required, be appointed a temporary judge of the Supreme Court (s. 8 [3]). In the illness or absence of the President a judge may be appointed Acting President (s. 8 [4]). The President's tenure of office is to be the same as that of a Judge (s. 8 [5]). The jurisdiction of the Court extends to industrial matters and industrial disputes as defined in the Act (s. 9), with power to the President as a mediator to deal, if he thinks it desirable, with any matter or dispute which would be within the jurisdiction of the Court if submitted to it (s. 10). The President for the purpose of dealing with any industrial matter, or preventing or settling any industrial dispute, may convene a compulsory conference at which parties summoned, whether connected with the matter or dispute or not, must attend under a penalty not

exceeding £500 (s. 11). The President has power to review the decisions and acts of the Registrar (s. 12). Industrial matters and disputes may be submitted to the Court (a) by the Minister of Industry or by the Registrar of the Court as being proper in the public interest to be dealt with by the Court, (b) by the employer or employers of not less than twenty employees in any industry; (c) by not less than twenty employers in any industry; or (d) under the Factories Acts by a report from the Minister, or a Wages Board. The Court may also deal with any industrial matter or dispute as to which a compulsory conference has been held, and which has not been completely settled at such conference. But industrial matters and disputes within the jurisdiction of a Wages Board may be dealt with by the Court only upon a report under (d) *supra*, or by way of appeal (s. 12). The Court may, if the President thinks fit, be assisted by two assessors, who are or have within the three years previous been *bonâ fide* engaged in the industry concerned and may be parties to the dispute—such assessors to be appointed by the President on the nomination of the parties to the dispute, or in default of nomination by the Governor (s. 14). In the course of the hearing of an industrial matter or dispute the Court is to suggest and do such things as it may think proper to bring about an amicable agreement, and if such an agreement is arrived at it is to be reduced into writing, filed in the Court, and, subject as the Court may direct, have the effect of an award of the Court (s. 15). Any association of employers or employees represented before the Court on the hearing is to be deemed a party to the matter or dispute (s. 16).

Awards of the Court are to be expressed in plain terms, avoiding unnecessary technicality, and to have effect within the specified locality for a specified period not exceeding three years (s. 17), and be binding upon all parties represented or properly summoned to appear as parties before the Court or all associations and persons on whom the award may be declared by the Court to be binding as a common rule and upon all members of associations which are bound (s. 18). Power is given to the President to deal with interlocutory matters and matters prescribed to be dealt with in chambers (s. 19). The Court may empower persons to take evidence on its behalf with the power of the Court in relation to the summoning of witnesses, the production of documents, and the taking of evidence on oath or affirmation (s. 20). As regards every industrial matter or dispute within its jurisdiction the Court is to take steps to ensure the appearance of all parties who ought to be bound and to hear or determine the matter or dispute in such manner as the Court in its discretion thinks best suited for the purpose without being restricted to the specific relief claimed by the parties (s. 21). But the Court is expressly prohibited from ordering or directing any preference of employment as between members of associations and non-members thereof (s. 21 [e]). An award may declare any of its provisions to be a common rule of the industry, but before doing this the



Court must have regard to the possible effects of competition and must also afford an opportunity to all persons interested of being heard if they so desire (s. 21 [g]). The Court may direct the local area within which a common rule is to take effect, and subject to what conditions and exceptions (if any) it is to be binding (s. 21 [h]). The Court may dismiss any matter which appears to it trivial or with which it does not seem necessary or desirable in the public interest to proceed (s. 21 [i]). The Court may give costs against any party, including the expenses of witnesses (s. 21 [j]), may proceed in the absence of parties who have been duly summoned (s. 21 [k]), may sit at any place (s. 21 [l]), adjourn to any time and place (s. 21 [m]), refer technical matters to experts and act upon their reports (s. 21 [n]), and vary its orders and awards and reopen any question (s. 21 [o]). The Court has no power to prescribe less than a "living wage," which means a sum sufficient for the normal and reasonable needs of the average employee in the locality where the work is to be done (s. 22). In awards relating to apprenticeship the Court is to make such provision as it thinks practicable for technical training in schools or otherwise (s. 23). The Court is given very full powers of enforcing evidence and may accept and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not (s. 24). The Court may exercise its powers either *ex mero motu* or on the application of any party interested or bound, except that an existing order or award shall be re-opened only on the application of some party affected or aggrieved (s. 25).

The Industrial Court takes the place of the Court of Industrial Appeals constituted under the Factories Acts, 1907-10, as the Court to deal with appeals from Wages Boards determinations, and to adjudicate upon the validity of such determinations, to exercise the powers and duties of Wages Boards in cases where such Boards cannot be formed or are unable to arrive at determinations (s. 26).

Part III. of the Act makes provision for industrial agreements, which may be made in relation to industrial matters between associations, or between an association and persons (s. 28), in a prescribed form for terms not exceeding three years (s. 29), a duplicate being filed in the office of the Registrar and in the office of every association party thereto within thirty days of the making thereof, and open to inspection pursuant to Rules of Court (s. 30 [1]). Upon the application of any person interested the Registrar is to investigate, and if satisfied that the agreement is duly made and executed, shall give a certificate accordingly, which certificate is made conclusive evidence of the fact stated therein (s. 30 [2]). Whilst an agreement remains in force other associations or persons may add themselves as parties by filing notice in the office of the Registrar (s. 31). An industrial agreement during its continuance is binding on all parties thereto, and upon all members of any association which is a party thereto (s. 32). Breach of an industrial agreement will render liable to the penalty fixed by the agreement, or if no penalty

is so fixed, then to a penalty not exceeding, in the case of an association, £250, in the case of an employer £100, and in the case of an employee £10 (s. 33). An industrial agreement may be rescinded or varied by another industrial agreement made between the parties thereto for the time being (s. 34). Upon the application of any party thereto, or person bound thereby, an industrial agreement may be varied so as to bring it into conformity with any Wages Board determination or agreement under s. 48 of the Factories Act Amendment Act, 1910, or any common rule (s. 35). An industrial agreement in the absence of express agreement to the contrary is after the expiry of its specified term to continue in force until one month after notice of a desire to determine it has been given by some party thereto to the Registrar and to the other parties thereto (s. 36). Provision is made for the manner in which industrial agreements are to be executed by associations (s. 37).

Part IV. of the Act deals with lock-outs and strikes. Any person who, or association which, does any act or thing in the nature of a lock-out or strike, or continues or takes part therein, is rendered liable to a penalty not exceeding £500, or in the case of a person imprisonment not exceeding three months (ss. 38, 39). If a majority of the members of an association are parties to such an offence the association itself is to be deemed to be a party (s. 40). An association of employers or employees which, for the purpose of enforcing compliance with its demands, orders its members to refuse to offer or accept employment, or to continue to employ or be employed, is to be deemed to do an act in the nature of a lock-out or strike according to the nature of the case, whether a lock-out or strike actually takes place or not (s. 41). Any person who is bound by an award of the Court or a Wages Board determination or an agreement under s. 48 of the Factories Act Amendment Act, 1910, and who without reasonable cause or excuse refuses or neglects to offer or accept employment, or to continue to employ or be employed on the terms of such award, determination, or agreement, is to be deemed to do an act in the nature of a lock-out or strike (s. 42). Picketing is prohibited under a penalty of £20, or imprisonment for not exceeding three months (s. 43). When an association or person has been convicted of an offence constituted by this part of the Act, the Court may grant a writ of injunction, either on notice or *ex parte*, to restrain such association or person from a continuance or repetition of the offence, disobedience on the part of a person being made a misdemeanour punishable by not more than six months' imprisonment, and on the part of an association entailing a penalty not exceeding £500 (s. 44). Penalties in respect of lock-outs, strikes, or picketing are charged upon past and future wages of the offender in excess of £2 per week in the case of a person who is married or has infant children, and in excess of £1 per week in the case of any other person (s. 45). Where a penalty is imposed under this part of the Act upon a person who at the time is a member of an association, the Court may order

the association to pay the fine out of its funds not exceeding £50 in case of a lock-out, £10 in the case of a strike, or the amount of the fine in the case of picketing, unless it be proved to the satisfaction of the Court that the association *bonâ fide* endeavoured to prevent the offence (s. 46). When the Registrar certifies to the Court that a lock-out or strike is taking place, or is threatened, the President may summon all parties suspected of having committed any of the offences under this part of the Act, and thereupon, without further information or complaint being laid, deal with such persons or associations (s. 47). Proceedings in respect of offences under this part of the Act are to be taken in the Industrial Courts (s. 48).

Part V. of the Act relates to breaches of awards and other offences. The penalty for breach or non-observance of an award is not to exceed for an association £250, an employer £100, or an employee £10; upon conviction the magistrate, if satisfied that the offence was committed in wilful defiance of an award, may grant an injunction restraining further offences, disobedience to which by a person is made a misdemeanour punishable by not exceeding three months' imprisonment, or by an association renders liable to a penalty not exceeding £250 (s. 49). Where wages or rates have been fixed by an award, for an employer to pay less renders him liable to a penalty, and any deficient payment may be recovered in the same proceedings (s. 50). If an employer dismisses an employee or injures him in his employment by reason merely of the employee being an officer or member of an association, or not being a member of an association, or being entitled to the benefit of an award, industrial agreement, Wages Board determination, or agreement under s. 48 of the Factories Act Amendment Act, 1910, he is rendered liable to a penalty not exceeding £20; and the onus is cast upon the employer of proving that an employee dismissed or injured in his employment was so dismissed or injured for some other reason (s. 51). If an employee ceases work in the service of an employer by reason merely that the employee is an officer or member of an association or is not a member of an association, or is entitled to the benefit of an award, industrial agreement, Wages Board determination, or agreement under s. 48 of the Factories Act Amendment Act, 1910, or employs or has employed a person who is not or was not a member of an association, he is rendered liable to a penalty not exceeding £10. And the onus is cast upon the employee proved to have ceased work to prove that he did so for some other reason (s. 52). If a person duly summoned to give evidence under the Act fails to appear, or refuses to be sworn, or to answer questions, or to produce documents, he is guilty of contempt of Court and liable to a penalty not exceeding £50, or to imprisonment not exceeding three months, unless he satisfies the Court or person before whom he was summoned that there was good and sufficient cause for such failure or refusal (s. 53). The proceedings of the Court are to be conducted in public unless the Court orders otherwise (s. 54). The Crown may intervene in proceedings if the

Minister of Industry considers intervention necessary for the safeguarding of public interests likely to be affected (s. 55). An industrial dispute is not to be deemed to have ceased by reason of the determination, in consequence of such dispute, of the relationship of employer or employee (s. 56). The Court may give directions for the representation of parties, but a party may not be represented by a solicitor or agent except by direction of the Court or consent of parties, and then at the party's own cost (s. 57). A penalty imposed upon an association may be recovered out of property in which it has a beneficial interest (s. 62), and if not paid within one month the individual members are jointly and severally liable, but with the proviso that no member may be required to pay more than £5 in respect of any one conviction (s. 63). Except in proceedings in respect of offences under the Act the Court may inform its mind in such manner as it thinks just and is not to be bound by any rules or practice as to evidence or technicalities or legal forms or the practice of other Courts, and is to be governed in its procedure and decisions by equity, good conscience, and the substantial merits of the case (s. 66). The Court may rescind or vary its own decisions or acts (s. 67), which otherwise are final and unchallengeable on any other ground than excess or want of jurisdiction (s. 68). Questions of law may at any stage be submitted by the President for the opinion and determination of the Supreme Court (s. 68 [2, 3]). Every award of the Court is to prevail over any contract of service or apprenticeship so far as inconsistent therewith, and such contract is to be construed as modified thereby (s. 78). Power is given to the President to make all such Rules of Court as may be required for the effective exercise of the functions of the Court and its officers (s. 74), and to the Governor to make such regulations in respect of other matters as may be necessary to give effect to the Act (s. 81), such Rules of Court and regulations being subject to a power of disallowance by either House of Parliament within fourteen sitting days of the same being laid before it.

**Animals.**—The Animals' Protection Act (No. 1106 of 1912) divides wild mammalian animals into three categories, of which the first comprises animals wholly protected, the second animals protected during a close season, and the third animals unprotected (s. 6), with power for the Governor by Proclamation to transfer any animal from one category to another, and to declare as Crown lands closed areas generally or to particular animals, and to prescribe areas within which the Act shall or shall not apply (s. 8). Permits may be granted for taking on Crown lands protected animals for scientific purposes (s. 10). A chief and other inspectors may be appointed, and every police officer is made *ex-officio* an inspector (s. 5) with powers of search and seizure (s. 11). Offences against the Act are defined (ss. 13, 15, and 17), and involve cumulative penalties (s. 21), enforceable by summary procedure (s. 22). The Act does not prevent a full-blooded aborigine taking any animal on Crown land for food, the keeping of animals as domestic pets, or the taking of animals by the occupier of cultivated lands for the protection thereof (s. 18).

**Shops Act.**—The Early Closing Act Amendment Act (No. 1104 of 1912) extends the closing time for newsvendors' shops by one hour (s. 17), empowers the Chief Inspector to grant licences for trading after closing time in case of sales for charities, wholesale trading by commercial travellers, and provisioning of ships (s. 24), and amends the machinery provisions of the principal Act in numerous respects.

**Vermin.**—The Wild Dogs Act (No. 1102 of 1902) constitutes a fund called the "Wild Dogs Fund" (s. 3) consisting of rates of 3*d.* per square mile on vermin-fenced lands, and 6*d.* per square mile on other affected lands (s. 4), and a subsidy of equal amount out of moneys provided by Parliament (s. 7) to be applied by the Treasurer in payment at prescribed rates for scalps and tails of wild dogs killed on rateable lands (s. 9).

The Vermin Act Further Amendment Act (No. 1107 of 1912) provides that the Commissioner may from time to time fix the annual rate of interest to be paid on future loans and advances under the principal Act (s. 2) in lieu of the rate of £4 per centum fixed by the principal Act.

**Friendly Societies.**—The South Australian Government Inscribed Stock for Friendly Societies Act (No. 1091 of 1912) creates a special stock to the nominal amount, until otherwise provided by Parliament, of £500,000 (s. 3) bearing 4 per cent. interest (s. 11), to be issued to friendly societies only (s. 4) at par (s. 5), redeemable only upon certain events affecting the constitution of the society, such as amalgamation or dissolution (s. 14), or when the money is required for certain objects of the society (s. 15), or after 1932 on twelve months' notice if Parliament provides funds (s. 17), and not transferable except in certain events to another society (s. 19). The money produced by the sale of the stock is to be applied for the construction of railways or other public purposes authorised by Parliament (s. 8).

**Married Women's Property.**—The Married Women's Property Act Amendment Act (No 1084 of 1912) enacts that a husband shall not be joined in any action for any tort of his wife, nor be liable for such tort (s. 2), and empowers the Supreme Court or a judge, where it appears to be for the benefit of a married woman restrained from anticipation, to bind with her consent her interest in any property notwithstanding such restraint (s. 4).

**Savings Bank.**—The Savings Bank Act Further Amendment Act (No. 1083 of 1912) is a measure to enable the State Savings Bank to meet the altered conditions brought about by the establishment of a Commonwealth Savings Bank utilising the Post Office agencies, which had before been used as agencies for the State Savings Bank. Extended powers are given to the Trustees to establish agencies and appoint agents (s. 13). The general revenue of the State is made liable for any deficiency in the funds of the Bank (s. 19), the Governor may cause the accounts of the Bank to be audited (s. 9), the Trustees' powers of investment are extended, but it is provided that the Trustees shall not invest in the securities of any other States in the Commonwealth without first giving the Government of the

State of South Australia the option of supplying securities on terms not less favourable (s. 10), and the Trustees are empowered to pay interest at differential rates according to the amount of the deposit (s. 15).

**Hawkers.**—The Licensed Hawkers Act Amendment Act (No. 1086 of 1912) extends the provisions of the principal Act to river traders travelling in boats on the River Murray or the lakes or other inland waters connected therewith (s. 4), provides that a servant's licence shall not be granted unless the employer himself holds a hawker's licence (s. 5), imposes a penalty of not less than £5 nor more than £100 or imprisonment for not exceeding six months, and a liability to forfeiture, for carrying intoxicating liquors (s. 6). A hawker who trades without a licence, or contrary to his licence, or fails to produce his licence when called upon, may be arrested by any justice, police officer, authorised person or persons to whom he offers goods for sale, and taken before a justice of the peace and dealt with summarily without any information or complaint (s. 7). To the power of search given by the principal Act is added a power to seize things illegally carried by a hawker (s. 8).

**Public Meetings.**—The Public Meetings Act (No. 1082 of 1912) makes it an offence for a person in, at, or near any place whatsoever where a public meeting is being held to behave in a riotous, disorderly, indecent, offensive, threatening, or insulting manner, or to use threatening, abusive, or insulting words, or, except by lawful authority or upon lawful grounds, to obstruct or interfere with the proceedings or the chairman, and imposes a penalty not exceeding £5 or one month's imprisonment (s. 3). The chairman, when of opinion that such offence is being committed, may direct the police to remove the offender, and makes it the duty of the police to obey such direction, and imposes a penalty (cumulative in the case of the offender) of not exceeding £5 or one month's imprisonment for obstructing or interfering with the police in the performance of that duty (s. 4).

**Municipal Corporations.**—The Municipal Corporations Act Further Amendment Act (No. 1093 of 1912) extends the powers of municipal corporations with respect to the carrying out of works either within or partly or wholly without the bounds of the municipality (s. 3) if approved by a poll of ratepayers, and such as in the opinion of the Minister will be permanent, of substantial benefit, and revenue earning and authorised by him (s. 6), with or without such amendments as he may propose (s. 5), and the borrowing on the security of the general rates the moneys necessary for the execution of such works (s. 8).

**Prisons.**—The Prisons Act Amendment Act (No. 1090 of 1912) amends the Prisons Act, 1869, in various details. It allows the sheriff with the consent of the Minister to remove a prisoner under sentence of hard labour to a place outside the precincts of the prison to carry out that labour (s. 5), to permit a prisoner for sufficient reason to be released within three days before the expiry of sentence (s. 6). For repeated offences in prison,

or for false or frivolous charges or accusations, a prisoner may suffer loss of marks earned, and also corporal punishment (s. 7). The sheriff is empowered to move a prisoner from one prison to another, or in case of illness to any hospital or infirmary (s. 8). Magistrates may direct imprisonment for terms not exceeding seven days, to be at the nearest police station, and if with hard labour that such labour shall be performed outside the lock-up (s. 9). Terms of imprisonment imposed for offences in gaol are cumulative unless otherwise directed, and suspend, whilst being served, the service of other incomplete sentences (s. 10). A prisoner may be brought up for an offence other than that for which he is in custody on the order of a judge without a writ of habeas corpus (s. 11). A prisoner may by leave of a judge be temporarily removed from the place of detention to any other place in the State if in the opinion of the judge the interests of justice will be served by such removal (s. 12). A prisoner is deemed to be in legal custody whenever being taken to or from prison or working outside or is otherwise beyond the walls of a prison in the custody or under the control of a prison or police officer (s. 14).

**Hospitals.**—The Hospitals Act Amendment Act (No. 1075 of 1912) transfers the power of appointment and dismissal of members of the staff from the Governor to the Board of Management, subject as to proclaimed offices and positions to the approval of the Governor, and as to all others to the approval of the Chief Secretary.

**Charities.**—The Public Charities Funds Act (No. 1078 of 1912) consolidates and amends the law as to the investment of charitable funds. A body corporate, the Commissioners of Charitable Funds, is continued (s. 7), constituted of three Commissioners appointed by the Governor, one of whom is to retire each year but to be eligible for re-appointment (s. 5), to be remunerated by a fee of 1 guinea for each meeting, but not exceeding 26 guineas in any one year (s. 6). Gifts to public charitable institutions are to vest in the Commissioners (s. 8), who are to invest the same in certain specified securities (including the purchase of freehold lands) with power to vary such investments (s. 11) and to sell (s. 12) or lease such lands (s. 14), and to accumulate the income of such investments (s. 10) or apply the same for the benefit of the institution interested (s. 15), and with power (subject to any special directions by the donor), with the consent of the Minister charged with the administration of the Act and of the Board of the particular institution concerned, to expend capital, moneys, and income in the erection and maintenance of buildings for the institution. The Commissioners may apply for judicial advice to the Supreme Court (s. 16), and are in the execution of their powers subject to its jurisdiction (s. 20). Proper accounts are to be kept (s. 21), audited (s. 22), and an abstract published yearly (s. 23). The Commissioners are to report annually to the Minister and the report be laid before Parliament (s. 24).

## 5. TASMANIA.

[Contributed by F. B. EDWARDS, ESQ., LL.B. (Tas.), B.A. (Oxon).]

Acts passed—Public, 53; Private, 2.

**Statutes Compilation.**—Act No. 5 is virtually a reproduction of No. 15 (1905) of Western Australia, and No. 186 (1908) of New Zealand. It imposes upon the Attorney-General a duty to effect a compilation of any Act and its amendments as soon as possible after a resolution directing such compilation has been passed by both Houses of Parliament. He is further empowered to make in the compilation consequential alterations from the text of the enactments compiled, a power which is restrained within its proper sphere by the statutory requirement that the Attorney-General shall, upon the submission of the compilation to Parliament, certify under his hand that it is a true and correct compilation of the Act and amendments mentioned in the resolution directing the compilation.

**Testator's Family Maintenance.**—Act No. 7 operates as a restriction upon the freedom of testation. It appears to be the complement of the Distribution of Intestates' Property Act, 1906<sup>1</sup>; for the object of both statutes is to ensure a provision, more or less adequate in the circumstances, out of the estate of a deceased person for the maintenance of his more immediate surviving dependants. The Act confers a discretionary power on the Supreme Court, or a judge thereof, in cases where a deceased person has wholly or partly so disposed of his property by will that his widow or children or any of them are left without sufficient means (including their own means independent of the testator) for their maintenance and support, upon application made not later than six months after the date of any grant of probate or letters of administration in respect of such will, to order provision to be made therefor out of the estate. The Court may refuse to grant the application on the ground that the character and conduct of the applicant are such as ought to disentitle him to the benefit of the Act. A certified copy of the order for provision is to be made upon the probate or letters of administration, and the order is to operate as if it were a codicil executed immediately before the testator's death.

**Education.**—S. 5 of Act No. 14 repeals ss. 27-32 of the Education Act, 1885 (which sections deal with the acquisition of land for the purposes of the Act), and substitutes a new section in lieu thereof. The second and sixth sections of the new Act operate to extend the compulsory education age from thirteen to fourteen years, and make minor amendments relating to exemption from the compulsory provision of the Act. S. 22 of the Education Act, 1885, is repealed and re-enacted, with the result that the parent of any child who neglects to cause such child to attend school

<sup>1</sup> 6 Ed. VII. No. 17.



according to the provisions of the Act is liable (i) for a first or second offence to a penalty of 5s. or 10s. as the case may be, recoverable with costs (if any) by distress only and not by imprisonment; (ii) for a third or subsequent offence to imprisonment up to seven days, or in lieu thereof (in the discretion of the adjudicating justices) to a penalty not exceeding £10. non-payment of such penalty may involve in the discretion of the justices distress without imprisonment, or committal for a term not exceeding seven days unless the penalty and costs be sooner paid.

**Cape Barren Island Reserve.**—Act No. 16 is an Act passed in the interests of and for the preservation of the half-caste descendants of the Tasmanian aborigines on Cape Barren Island, a portion of which has for many years past been held as a reserve for them. The main purpose of the Act is the subdivision of this reserve into homestead and agricultural areas, *i.e.* blocks not exceeding 3 acres and 50 acres respectively; and it is specially provided that whilst the former must be in one block, the latter may consist of two or more separate portions. The Act specifies by name the persons to whom and to whose widows or to whose descendants, being of the age of eighteen years at least, such areas are available for selection, and classifies them as follows:

- (i) Half-castes living on the reserve;
- (ii) Half-castes not living on the reserve;
- (iii) White men married to half-castes now living on or occupying part of the reserve.

It is provided that if any person of the second of the above classes fails for three years after the commencement of the Act to apply for an area, then he, his widow, and descendants shall thereby be rendered incapable of making any such application. Every proper applicant is declared entitled to receive a licence to the exclusive possession and occupation free of rent of the surface of one homestead block and one agricultural block, but such licence shall be subject to and shall contain such conditions as may be prescribed, or as the Minister may impose, and (i) in the case of a homestead block:

- (a) a condition that the licensee shall erect thereon within two years a residence of design and in materials approved of by the Minister, unless a residence of which the Minister approves is already erected thereon; and
  - (b) a condition that the licensee shall habitually and continuously reside thereon for six months at least in each year by himself or his family.
- (ii) In the case of an agricultural block:
- (a) a condition that no person shall reside thereon without the consent of the Minister; and
  - (b) a condition that the licensee shall, to the satisfaction of the Minister, securely fence the block and cultivate it, or continuously use it for agricultural, horticultural, or grazing purposes.

The Minister is invested with a discretion to cancel any such licence on default in compliance with any conditions to which it is made subject, and thereupon the block concerned reverts to the reserve. At the expiration of three years from the issue of any licence, or earlier if the Minister thinks fit, the licensee or any person claiming and entitled under the Act to claim through a deceased licensee acquires the right, provided that all the conditions of the licence and the provisions of the Act have been fully complied with, to apply for and receive a lease free of rent for ninety-nine years (renewable for a like period) of the block in respect of which the licence was granted; but such lease shall contain such of the conditions above mentioned in connection with licences as are applicable to leases, and shall be liable to cancellation and forfeiture on breach of such conditions or the provisions of the Act.

No licensee or lessee is allowed to dispose of his licence or lease except by will and then only to a person who is entitled to make application for a lease, and who is not already a licensee or lessee. In case of intestacy of any licensee or lessee the Minister may transfer the licence or lease to the widow (if any), or if there be no widow to any eligible descendant, or he may otherwise deal with it for the benefit of the family of the deceased. The block of any licensee, being a woman, who marries a white man, becomes thereupon forfeited and reverts to the reserve. The Act contains a further provision empowering the Minister to supply fencing wire, building materials, agricultural implements, seed, and other things to a licensee or lessee in value in each case up to £50, subject to a contract for repayment of the cost thereof with interest at 5 per cent., breach of which involves forfeiture of the licence or lease.

S. 29, following out a recommendation made in a report of the Commissioner of Police, creates of the island and the three-mile belt around the reserve a liquor prohibition area, and contains very stringent provisions against supplying intoxicating liquor therein. Ss. 8 and 9 authorise the creation out of the reserve of "reserves for public purposes" and the making of satisfactory provision thereon of land for the erection of churches.

**Offences against the Person.**—Act No. 17 amends the law relating to the abusing of girls so that prosecutions thereunder where the age of the girl is between fourteen and sixteen years must be commenced not later than three months after the commission of the offence.

**Deputy Governor's Powers.**—An enactment (No. 18) of retrospective effect, passed for the purpose of removing doubts as to the proper interpretation to be put upon clauses 12 and 13 of the Letters Patent constituting the office of Governor, provides in effect that (1) the power to appoint a deputy, conferred by clause 13 of the above-mentioned Letters Patent, applies as well to the Lieutenant-Governor or Administrator appointed under clause 12 of the Letters Patent as to the Governor, during such time as the Lieutenant-Governor or Administrator may be exercising the

functions of the Governor; and (ii) the powers exercisable by any such deputy should be as well the powers and authorities vested in the Governor by virtue of any statutory or other law or usage of the State as the powers and authorities conferred upon the Governor by such Letters Patent; and (iii) such powers should be exercisable subject to any limitation expressed in the instrument appointing such deputy.

**Aid to Mining**—By Act No. 21 is set up a fund of £20,000 to be spent in carrying out the purposes of the Act. It empowers the Minister of Mines to carry on prospecting and mining development in various mining centres. In the event of any valuable discovery or development resulting from such efforts, it shall belong to the Crown, but the Minister is directed to offer it to the mining lessee (if any) of the land whereon it has occurred, and, subject to arbitration, to fix the price and conditions of purchase. If such person (i) does not desire to acquire; or (ii) fails for one month either (a) to carry out any agreement he has entered into with the Minister, or (b) to comply with the terms of any such arbitration as aforesaid; or (iii) impedes the determining of any question in dispute, the Minister may let the discovery or development on tribute at a royalty, one-half of which is to belong to the Crown and the other half is to be the property of the lessee, or may deal otherwise with such discovery or development as he thinks fit.

**Sale of Fertilisers.**—Act No. 23 regulates the sale of fertilisers, that is to say, any substance containing an appreciable quantity of nitrogen, anhydrous phosphoric acid, or anhydrous oxide of potassium for fertilising purposes, other than farmyard or stable manure, lime, marl, seaweed, crude night soil, crude offal, or any crude refuse which has not been dried or otherwise treated so that decomposition will be arrested until its application to the land. The main features of the Act are:

(i) The requirement that every dealer in fertilisers shall notify to the Director of Agriculture (a) his name and place of business; (b) the distinctive name or brand of each fertiliser in which he deals; (c) the place of manufacture of each such fertiliser; and (d) the place where it can be obtained.

(ii) The delivery in each year of a certificate by each dealer of the specified ingredients of each brand of fertiliser in which he deals.

(iii) The prohibition against selling in quantities of less than 1 cwt. any fertiliser, unless (a) accompanied with an invoice certificate containing (*inter alia*) certain particulars of the composition of the fertiliser; (b) labelled with the prescribed label.

(iv) Invoice certificates and labels are to operate as a warranty as to the goods sold or exposed for sale.

(v) Special provisions as to sale on preparation according to special prescription.

(vi) Provision for taking samples for analysis and obtaining analyses by the Government analyst.

Most of the above-mentioned provisions follow more or less closely the language of the Queensland Act, 5 Ed. VII. No. 16.

**Mining Development.**—Act No. 24 is divided substantially into five distinct parts, dealing with Advances for Mining, Advances to Miners for Prospecting, Establishment of Plant for Crushing, Ore-dressing, or Smelting, Assistance for Boring, and Construction of Races and Dams respectively.

The provision for advances for mining or for prospecting is on the pound for pound basis, requires a professional report as a condition precedent to a grant, and the amount of the grant is limited in the former case to £1,000 and in the latter case to £200. Advances for mining are available for (i) developing a mine; (ii) procuring, erecting, and connecting machinery, plant, or appliances for such purpose; (iii) providing other works and things which in the opinion of the Minister may be necessary for such purpose; and the making of any advance is subject to the approval of the Governor in Council. The borrower must execute a mortgage over the property concerned to secure the advance, and the Act creates a statutory first charge over the borrower's profits for the same purpose.

The establishment by the Minister of a plant for crushing, etc., the granting of financial assistance for boring and the construction of races and dams are also conditional upon the receipt by the Minister of a professional report on the proposed outlay.

**Public Trust Office.**—The Act (No. 26) which constitutes the Public Trust Office and the Public Trustee is an almost exact replica (*mutatis mutandis*) of the New Zealand Act No. 159 of 1908. It repeals the various enactments which provide for the management of the estates of deceased persons, declares inoperative in Tasmania the proviso to s. 12 of the English Act 9 George IV. c. 83, and invests the Public Trustee with all the authorities, functions, and duties of the Curator of Intestate Estates. In other respects it follows closely the scheme and language of the New Zealand Act.

**Magistrates' Summary Procedure.**—Act No. 27 effects an amendment of the principal Act on the subject—19 Vict. No. 8—by extending the power of justices before whom any information, any complaint, or any summons to appear and answer, or warrant to apprehend defendant to answer, any information or complaint comes for hearing, to amend the same; it further imposes on them a duty to make any amendments therein as may be necessary to determine the real question in dispute or which may appear desirable.

**Codlin Moth.**—Act No. 28 makes small amendments in the Codlin Moth Act, 1888, chiefly differentiating in the amount of tax imposable by Fruit Boards between fruit trees that have been planted under and those that have been planted over four years; the result is that the former are taxable up to 50 per cent. only of the amount imposable on the latter.

**Contagious Diseases (Cattle).**—Act No. 29 repeals the Act of 1861, extends the list of places at which imported cattle may be landed, and extends the operation of the Act of 1901 to all animals.

**Land and Income Taxation.**—An amending Act (No. 35) (*inter alia*) (i) imposes in respect of deductions from the gross amount of income, being the annual amount of sums paid by way of interest upon any money borrowed by the taxpayer; the condition that the principal money in respect of which the deduction is made must be used for the purposes of his business; (ii) removes the latter of the alternative deductions mentioned in paragraph (c) of subdivision 7 of s. 53, namely (a) sums paid for actual repairs, and (b) annual payments into a depreciation fund, (iii) allows deductions for (a) depreciation (to be determined by the Commissioner, but no depreciation to be allowed in respect of buildings) or alternative (but subject to Commissioner's approval) of annual payment into sinking fund, (b) annual fire insurance premiums over stock-in-trade, (iv) declares that companies are liable for payment of tax in respect of income arising, accruing, received in, or derived from this State unless expressly exempted.

## 6 VICTORIA.

[Contributed by C. J. ZICHY-WOJNARSKI, ESQ., K.C., and W. HARRISON MOORE, ESQ.]

Acts passed—92.

The statutes include a large number of measures which are local and private in character, and also many amendments of existing legislation in points of detail which are of no general interest.

**Flood Protection.**—No. 2359 amends last year's Act upon this subject. The State Rivers and Water Supply Commission are empowered to make and levy flood-protection rates and charges for the protection of land from damage by flood, and for the payment of compensation for damages, if any, caused by breakages in the embankment of any flood-protection works; and further, the annual charge to be made is to be limited to a sum not exceeding one penny per acre per annum for each acre of land included in the district.

**Mining Leases.**—No. 2366 increases the security of tenure of mining leases in Victoria. Originally the term for a gold-mining lease was not to exceed fifteen years, and for mineral leases not to exceed thirty years. Mineral leases were then shortened in period to correspond with gold-mining leases, and both kinds were subject to renewal by the Governor in Council, who might grant or refuse the renewal. This present Act confers a right of renewal by declaring that it shall be deemed to be a covenant in all such leases that on the due performance and observance of the covenants, conditions, and provisos of any such lease, the holders shall be entitled to a renewal from time to time of such lease for a period at each renewal not exceeding fifteen years from the expiration of the lease or any renewal thereof.

**Game.**—No. 2373 is an amending measure increasing the restrictions as to the killing of native game in the close season, so as to strengthen the Game Laws and protect native game. The onus of proof in the case of having possession of game or native game contrary to any provision of the Act is put upon the defendant. The maximum penalty for killing protected animals is increased, and proof is facilitated of a gun being a swivel or punt gun, and the penalty is increased for having possession of such an instrument, and it may be seized and destroyed whether being used or not.

The general powers of search and seizure are extended, but not to provide for the entry of any private house.

**Pounds.**—No. 2379 is a short amending Act providing for the sale of impounded cattle at a sale yard, instead of at the pound, the sale to be held by a duly licensed auctioneer, and after certain notices have been given and made. Not more than one head of great cattle, nor more than ten sheep, goats, or pigs are to be sold in one lot, but a cow with her calf or a mare with her foal may be sold in one lot. Certain further but unimportant textual alterations are made in the principal Act.

**Fisheries.**—No. 2391 is an amending Act, but with some new provisions. Annual fishing licences for persons who take or net fish for sale are now required, with a duty on the licensee to produce such licence to the Inspector of Fisheries or to any member of the police force.

Larger powers of search are conferred upon the inspector and the police force, and the inspector may require returns to be made showing the true weekly statement of all fish or oysters taken by a consignee or received, whether as principal or agent or salesman by any person, and showing the quantity of each species of fish or oysters and the waters in which they were taken respectively. Explosives are forbidden to be used in any waters without permission of the Minister.

Larger powers of seizure of nets, boats, tackle, fish, etc., are also conferred than were already given to the Inspector of Fisheries and to members of the police force, and increased restrictions are also made as to underweight fish and close season fish and as to oysters; and additional power to the Governor in Council is also given to make proclamations for regulating and improving the industry, and for carrying out the provisions of the Fisheries Acts.

**Closer Settlement.**—No. 2438 is an Act making numerous amendments in detail to the Closer Settlement Acts of the State, of which the principal is the Act of 1904 (No. 1962).

The Lands Purchase Board, which has under the principal Act power to acquire land and dispose of it on conditional purchase leases for farm allotments, workmen's homes allotments, and agricultural labourers' allotments, and to clear, fence, and otherwise improve the land, may, under s. 4 of this Act, include in improvements the sowing and planting of the land and the erection of buildings thereon.

By s. 5, the maximum values of the areas of the allotments to be disposed of under the Act are increased from £100 to £250 in the case of workmen's home allotments, and from £200 to £350 in the case of agricultural labourers' allotments; and by s. 6 the maximum holding of persons holding allotments under the Act is raised from £1,500 to £2,500. In addition to the power under the Act of 1909 (No. 2229) of making advances to lessees on the security of their improvements, the Board is now empowered to advance on the security of stock at the rate of 5 per cent. The total amount of all advances to any lessee is not to exceed £500, and the advance on improvements is not to exceed 60 per cent. of their value (s. 18); but after six years of the lease have run, the advance may, under certain conditions, amount to £1,000. Dealing with the case of mortgages of land held under conditions requiring residence, the Act provides for notice to be given by the Crown in case the holder has incurred a forfeiture by non-residence, and the forfeiture shall not be enforced against the mortgagee who calls in his claim and failing repayment sells to a person entitled to hold the allotment. A covenant to reside is to be implied in every such mortgage, and failure to comply with the covenant has all the consequences of a failure to pay principal or interest (s. 20). S. 22 allows some relaxation to lessees of the condition of residence for special reasons; and s. 24 mitigates the prohibition of alienating, mortgaging, or sub-letting workmen's or agricultural labourers' allotments during the first six years of the lease imposed by prior Acts. By s. 29 the Board may grant to, or permit the acquisition by, lessees under the Acts additional land adjoining their allotment, provided that the value of the whole shall not exceed, in the case of homestead allotments, £4,000, excluding the value of the homestead; in the case of a farm allotment, £2,500, exclusive of buildings and improvements; in the case of a workman's home allotment, £250; or in the case of an agricultural labourer's allotment, £350. For the purpose of promoting irrigation settlement, the powers concerning acquisition and disposal of lands enjoyed by the Lands Purchase and Management Board are conferred on the State Rivers and Water Supply Commission (s. 31).

S. 39 is an interesting attempt to induce the settlement of persons deemed to have special qualifications. Persons between the ages of twenty-one and twenty-five who have a degree, diploma, or certificate in agriculture from the Melbourne University, or a State agricultural college or agricultural high school, or have similar qualifications approved by a committee appointed for that purpose, and who have had three years' practical experience in agriculture, receive a concession by the postponement of the first three years' payments of instalments on a conditional further lease. Under s. 41 persons whose land is compulsorily acquired have the right to select and retain a portion thereof, situated about the homestead, not exceeding £6,000 in value, exclusive of improvements, or £10,000 if the judge assessing compensation so permits. Officers employed under the Acts are liable to be dismissed

from the service and to a fine of £100 if they accept any reward other than their official salary for anything done by them under the Act, if they are interested in any contract with the Board, or if, without permission, they acquire any lands under the Act, except under a will or intestacy.

**Country Roads.**—No. 2415 is probably the most important Act of the session, and aims at a general improvement of road communication in Victoria. A Country Roads Board consisting of three experts is appointed, and their function is, in the first instance, to make themselves acquainted with and to consider the road requirements of the State. They are to determine what shall be main roads and may lay down the plan of new roads or close existing roads. They are to prepare estimates for permanent improvements of such roads, and thereupon the Governor in Council may order that the works shall be carried out.

The actual execution of road works is—contrary to the original scheme of the measure—left in the hands of the municipal councils, but the work must be carried out to the satisfaction of the Board, and the Governor in Council may order that any specified work shall be carried out by the Board; a similar provision applies to maintenance. The cost of making and maintaining the roads is to be paid in the first instance by the Treasury upon the warrant of the Board, and is then to be assessed by the Board on the municipalities (subject to appeal to the Minister) in proportion to the benefits received by them respectively from the expenditure. The total amount levied on the municipalities for any year is not to exceed one-half the expenditure incurred on permanent works and maintenance for that year, and is to be so adjusted that while ability to contribute is a factor to be taken into account in computing the share of any municipality, no municipality, however able, is to be liable for more than two-thirds of the amount allocated to it. The Board is provided with funds by the issue for five years of Government stock or debentures to an average amount of £400,000 per annum. The municipalities are to pay to the Board 6 per cent. (which includes the provision for a sinking fund) per annum on the amount due by them on permanent works, and must pay annually the amount due from them in respect of maintenance. They have power to impose a special rate upon the owners of property in the district to raise the money required by them; and the Act itself imposes rates of fees on motor vehicles of all sorts, rising from 5s. in the case of the motor-cycle to £6 6s. in the case of a motor-car of more than 33 horse-power. Where a municipality makes default in payment, the Board may itself exercise the rating power.

A significant provision in the Act is one that prescribes a forty-eight hours' week and a minimum wage of 8s. per day of eight hours for unskilled workmen employed by the Board, with additional rates for overtime. Skilled workmen are to be paid at the recognised standard rates for the recognised hours. It may be added that the Act is a compromise between a Government scheme for putting the whole subject in the hands of a central



Board free of political influence, and the disinclination of the country members and the municipalities to abandon altogether the old system which left the management of roads to the municipalities, with the aid of a subvention from the Treasury distributed by Government.

**Developmental Railways.**—In 1891 Parliament determined not to proceed to the consideration of any scheme for the construction of a railway estimated to cost more than £20,000 except upon the recommendation of a statutory committee then provided for called the Parliamentary Standing Committee on Railways. The present Act (No. 2381) provides that where the Committee has considered the proposal to construct a country railway and has not recommended it or has recommended it only subject to the condition that any deficiency in revenue shall be made up out of the Developmental Railways Account, the Legislative Assembly on the motion of the Minister of Railways may declare that it is expedient to construct a developmental railway, and thereupon it becomes the "statutory duty" of the Minister to introduce a Bill for the construction of the railway. A new account is to be opened at the Treasury to be called the Developmental Railways Account, and to it are to be paid the proceeds of sales of Crown lands by auction. There may be appropriated for the purposes of this Act out of the fund in any one year such an amount as is equal to 4 per cent. on £1,000,000, which is to be available to meet deficiencies arising from such railways.

**Railway Deficiency Rate Abolition.**—Under various Acts of Parliament municipalities and special trusts were liable to pay the annual deficit caused by the failure of the revenue of certain lines of railway to pay interest on cost and to pay working expenses. The present Act (No. 2410) schedules a number of railways in which this liability is discharged.

**Railway Funds.**—This Act (No. 2423) represents the abandonment of a policy initiated in 1907 for accumulating for railway purposes any surplus railway revenue in two funds until such funds should amount to £300,000 and £200,000 respectively. In 1909 the policy was relaxed by enabling the Government to carry the railway surplus to meet any deficiency in general revenue, but it was required to pay to the funds interest at  $3\frac{1}{2}$  per cent. on the amount with which they should have been credited.<sup>1</sup> Now the funds are extinguished and the £72,000 standing to their credit are applied in part to education and in part to a Railway Rolling Stock Replacement Fund.

**South Australia and Victoria Borders Railway.**—No. 2424 is an Act for ratifying an agreement between the two States as to the construction of lines of railway on the border, and authorising each Government to do certain acts in the territory of the other. The operation of the Act is conditional on the passing of corresponding legislation by South Australia.<sup>2</sup>

**Melbourne Harbour Trust.**—No. 2449 reconstitutes the Melbourne Harbour Trust Commissioners, the port authority of Melbourne, by substituting five commissioners appointed by the Government for the seventeen com-

<sup>1</sup> See Journal, No. xxiv pp. 398-9.

<sup>2</sup> See *SHFPA*, p. 127.

missioners of whom the body has heretofore consisted. The Chairman is to devote himself exclusively to the work of the Trust and to receive a salary of £1,500 a year. Of the other commissioners, one is to be a shipowner, another an exporter of wool, butter, fruit, grain or other Victorian produce, a third must be an importer, and the fourth must be identified with primary production in Victoria. They are remunerated by fees, not exceeding in the case of any commissioner £250 a year.

**Reserves on Private Property.**—No. 2445 deals with the case in which an owner of land has at some time in selling it, or a portion of it, reserved some small strip between the land sold and any street, lane, or passage. The Act now enables the owner of the land to acquire such strip not being more than 4 ft. in width wherever it separates him from such street, lane, or passage.

**Conveyancing Act.**—No. 2440 amends the Conveyancing Act, 1904, by selecting and enacting as law in Victoria those provisions of the English Act 1 & 2 Geo. V. c. 37, which can with advantage be introduced into the law of this State. The sections copied are ss. 1, 2, 4, 5, 7, 8, 9, 10, 11, 14, and 15. When the principal Act of 1904 was passed, modelled upon the English Act of 1881, the receivership clauses in the then existing Real Property Act were repealed, and the corresponding receivership clauses in the English Act were not inserted or incorporated, and that omission is rectified by now enacting the provisions of 44 & 45 Vict. c. 41 upon that subject. The Act is completed by enacting for Victoria s. 65 of 44 & 45 Vict. c. 41 and s. 11 of 45 & 46 Vict. c. 39, dealing with the enlargement of the residue of long terms into a fee simple.

**Administration and Probate.**—No. 2369 reproduces s. 79 of the English Act,<sup>1</sup> cancelling the rights of an executor renouncing probate as if he had not been appointed executor. The utility of the Act is to enable the executor of an executor to get registered under the Transfer of Land Act in respect of lands of the first testator notwithstanding that a refusing executor survived, for as the law stood, the Titles Office could not accept the renunciation of the non-proving executor without first requiring that he should be cited to appear and fail so to do, under the provisions of the Wills Act in force.

No. 2406 continues for a further period of twelve months (*i.e.* the period between December 31, 1912, and January 1, 1914) the rates at present existing of probate duty chargeable on real and personal property in Victoria of deceased persons. A power is conferred by this Act upon the Commissioner of Taxes, where he believes duty would be payable on the real or personal property of any deceased person, but where probate or letters of administration have not been applied for, to obtain from the Supreme Court an order on the proper person to file the necessary statement for assessment of duty or for himself to do so, in certain cases; so that he may decide whether the particular estate should pay duty or not.

<sup>1</sup> 20 & 21 Vict. c. 77.

**Spirit Merchants' Licences.**—The Victorian Courts had to consider recently their power to compel by *mandamus* the Treasurer of Victoria to issue a wine and spirit merchant's licence to any person complying with the requirements of the Customs and Excise Duties Act, 1890, by registering his premises at the office of the clerk of the Licensing Court for the district and by paying the fee to the receiver and paymaster of the Treasury. That Act had made no provision for any inquiry into the character or *bona fides* of the applicant or the suitability of his premises or the wishes or requirements of the particular locality sought to be served, and the result had been in some cases that such licences were a medium for sly grog-selling, and the Treasurer of Victoria in the litigated cases had assumed a right to refuse to issue a licence although the requirements of the statute law were fulfilled. This present Act (No. 2376) repeals the Customs and Excise Duties Act, 1890, so far as its provisions in this matter are concerned and brings spirit merchants' licences and their issue and transfer under the Licensing Acts and with power to the Licensing Courts to grant or refuse such licence or transfer. Such a licence authorises the licensee to sell duty-paid spirituous liquors, wine, or fermented malt liquors in quantities not less than two gallons. The Act forbids spirits to be drunk on the premises where sold.

**The Licensing Districts.**—One purpose of Act No. 2446 is to retain the basis of calculation for determining the statutory number of hotels for each licensing district—a matter that had been inadvertently affected by the passing of the Electoral Act, 1910 (No. 2288), which came into force in August 1911, and had abolished the rolls of ratepaying electors for Assembly electoral districts and divisions. Municipal clerks now are to furnish the Minister with returns showing the number of *male* ratepayers enrolled, and from such returns the Minister will determine the number of inhabitants in each licensing district by multiplying the number of male ratepayers by five and will publish the number in the *Gazette*.

Another purpose is to modify the law, in certain cases, whereby the total amount of licence fees annually lost in consequence of the closing of hotels by the Licences Reduction Board has to be *pro rata* borne by the surviving hotels of each district. The said Board is now authorised in making its assessment to assess either the whole or only such portion not being less than one-half of the lost licence fees as appears to be equitable. The cases for such modification are :

- (a) Where there has been a material diminution of the licensed victualler's trade of the whole or portion of a district affected by the closing of any hotels.
- (b) When the trade of a closed house was so limited as not to warrant the assessment of the whole of the lost fee.
- (c) When the trade of the remaining hotel or hotels is so limited that the allotment would be oppressive.
- (d) Where by reason of distance or sparsity of population it is probable

that the trade of the hotels affected will not be materially benefited by the closing of any other hotel

**Custody of Infants.**—Victoria had, in a legislative sense, lagged behind in the matter of the guardianship of infants and the custody of children, and comment had been made in the High Court of Australia as to the non-adoption by Victoria of legislation similar to the English Act 49 & 50 Vict. c. 27. This Act (No. 2439) now brings the Victorian law into line with that of England by adopting the main provisions of that Act.

**Registration of Births, Deaths, and Marriages.**—Under this title we unexpectedly find a provision for the legitimation of children born out of wedlock by the subsequent marriage of their parents and registration by the father as required by the Act. Legitimation by subsequent marriage was introduced in 1903 (Act No. 1835), but registration had to take place within a time prescribed, and the present Act (No. 2435) removes that restriction.

**Pea Rifles and Saloon Guns.**—No. 2380 is directed primarily to the restraint of this source of mischief and danger in the hands of young persons. No young person under the age of eighteen may have such a weapon, and it is an offence to sell, give, or lend to him, under a penalty of £10. Similar provisions apply to ammunition. Weapons may be seized under the Act and held subject to the order of a Court of petty sessions. No person is to make use of a pea rifle or saloon gun on private property without the consent of the owner or occupier of such property.

**Vehicles.**—No. 2384 is a very short Act of one section to put down what are known in America as "joy-rides" in borrowed motors, and it punishes by a fine of not more than £20 or by imprisonment for a term not more than twelve months the taking of a vehicle, motor-car, or bicycle without the consent of the owner or other person in lawful possession. This section brings the law upon the point into correspondence with the existing law upon the subject of using or working animals without the consent of the owner or other person in lawful possession.

**Police Offences.**—No. 2422 consolidates the provisions of thirteen Acts dealing with police offences. It is not a mere consolidation. Minor amendments are made, and a number of the old clauses have been readapted to remove ambiguity and obscurity, and to obtain clearness of expression. The whole of the statute law of Victoria is being consolidated by His Honour Mr. Justice Cussen, and this is one measure completed by him.

**Supreme Court.**—No. 2437 empowers the Court to make rules for regulating the procedure for the service on any person in Victoria of any process or citation where in any civil matter pending before a Court of a foreign country a letter of request from such Court is transmitted to Victoria, and then to the Supreme Court of Victoria by the Attorney-General of Victoria. Provision is also made for the remission from service under articles and from certain qualifying examinations as barristers and solicitors

of certain managing law clerks who succeed in satisfying the Supreme Court judges of their service for ten years or upwards under some barrister and solicitor of the Court, and who under his direction and supervision for that period have been engaged in the transaction and management of such matters of business as are usually transacted by barristers and solicitors.

**Inter-State Destitute Persons' Relief.**—No. 2401 is an Act intended to provide by reciprocal legislation with other States for cases in which persons desert wives, children, or other dependants in one State, and themselves take up residence in another. Where the desertion takes place in some other State the summons or other process issued by a Court of such State for compelling a contribution to be paid may be served in Victoria (s. 6); and where the desertion takes place in Victoria the Victorian summons may be served in any other State, and if the defendant do not appear the summons may be heard in his absence. The Act also contains provisions, conditional on the like provisions being made in other States in favour of Victoria, whereby an order for a contribution made by a Court in another State may be transmitted to an officer in Victoria to be entitled the "Collector for Inter-State Destitute Persons," who shall then present the order for endorsement to a justice of the peace, and upon endorsement the order becomes enforceable against the defaulter in Victoria. The moneys are payable to the Collector, and are by him forwarded from time to time to the corresponding officers in the States concerned. The Victorian Collector also has the duty of forwarding to other States orders made by the Victorian Courts against persons in those States.

**Training Ships.**—No. 2367 regulates voluntary training ships for boys. Power is given to the Governor in Council to declare any ship belonging to or under the control of the Government of Victoria to be a training ship (s. 3).

A "Training Ships Committee" of not more than seven persons is provided for, as well as officers, instructors, and employees, and certain powers given to the committee (ss. 4-7).

Restriction is put upon the boys to be admitted to such ships. The boy must be under sixteen years of age and of good character, and an agreement in writing must be entered into prior to his admission, and be signed by the boy's parent or guardian, or person in control of the boy, and after admission the boy is to remain until the expiration of the period for which he was admitted, or until he attains the age of seventeen years (ss. 8-10).

Boys admitted prior to the commencement of the Act to the training ship *John Murray* are to come under the provisions of this Act (s. 11).

Deserting boys may be arrested and brought back (s. 12), and a penalty is imposed for inducing any boy to desert (s. 13).

The Committee is also made immune from actions in respect to anything done under the provisions of the Act.

**Factories and Shops.**—No. 2386 consolidates in 244 sections eight prior

Acts dealing with factories and shops in force at the date of this consolidation.

No. 2447 confers upon the Hotel Employees' Board an additional power of fixing a varying rate to be paid to such employees, varying according to whether full or partial board and lodging is received by the employee. It provides, too, that children of any employer and employed by him are not to be affected by any determination of Wages Boards; and that the Governor in Council shall have power to fix an annual holiday for any trade upon petition, and in substitution of any day fixed for that purpose by the principal Act.

**Public Service.**—In Victoria as in Australia generally the public service is regulated by statute, and not as in England by executive act. The present Act (No. 2383) provides primarily for the reclassification of the service, and requires the Public Service Commissioner to prepare (*a*) a general statement of the duties of each officer, or such particulars as may be deemed necessary; (*b*) a provisional classification of each officer, of each office, and the pay to be assigned thereto; and (*c*) a provisional classification, where he thinks fit, of offices and pay without assigning any officer thereto. This provisional classification is to be published for general information, and officers have a right to request a reconsideration of their case. When all appeals have been dealt with the Commissioner makes a final classification, which is operative. The Act sets out in a schedule the rates of pay for the several classes of office in the service. The other provisions of the Act are of a miscellaneous kind affecting temporary employees, promotion, discipline, and qualifications. The Act copies a provision of the Commonwealth Public Service Act whereby no male officer with three years' service who is over twenty-one years of age shall receive less than £108 per annum.

**Victorian Government Debentures Regulation.**—No. 2404 contains a number of general provisions to apply to debentures issued by the Victorian Government. Amongst other things it enacts that where debentures are proved to the satisfaction of a judge of the Supreme Court to have been lost or destroyed the Government may on a proper indemnity being given issue new debentures for the same sum, and bearing the same date, number, and rate of interest as those lost or destroyed.

## 7. WESTERN AUSTRALIA.

[*Contributed by F. L. Stow, Esq., LL.D.*]

Acts passed—27.

The session lasted but a short while—from November 1, 1911, to January 16, 1912. A general election took place in October 1911, and, as a result, the Government was deposed and a Labour Ministry took its place. Of the Acts passed four are Money Acts (appropriation, supply, taxation, and

loan), five are railway bills, and one a Rates Validation Act. Among the railway Acts is included the Act agreeing to the construction by the Government of the Commonwealth of the Transcontinental Railway from Port Augusta to Kalgoorlie.

Of the remaining seventeen Acts, six, namely the Deputy Governor's Powers Act, the Goldfields Water Supply Act Amendment Act, the Health Act Amendment Act, the Licensing Act Amendment Act, the Municipal Corporations Act Amendment Act, and the Police Benefit Fund Ordinance Amendment Act, are not of general interest and require no summary. The others are summarised below.

**State Hotel.**—The particular form of State activity which No. 47 of 1911 authorises is possibly not confined to Western Australia; but it certainly exists in but few other places. The Act authorises the Colonial Treasurer to establish and carry on a State hotel at Dwellingup, as he, without any specific legislative authority, already does at Gwalia.

**Veterinary Act.**—No. 51 of 1911 provides for the creation of a Veterinary Board charged with the duty of admitting qualified persons to practise veterinary surgery and medicine, and confines the practice of those professions to persons so admitted. An exception is made in favour of persons not possessing the requisite qualifications who have been in actual practice for five years. These may be admitted to practise as "Veterinary Practitioners."

**Criminal Code.**—An amendment of an extensive character is made in the Criminal Code by No. 52 of 1911, which deals with two reforms: (1) the indeterminate sentence (called in the Bill *preventive detention*), and (2) the Court of Criminal Appeal.

**Preventive Detention.**—The provisions here set forth are based partly on the New South Wales Habitual Criminals Act, 1905, and partly on the English Act, 8 Ed. VII. c. 59.

Crimes are classified for the purposes of these provisions as follows: Class I. Any unlawful homicide, conspiracy to murder, inflicting grievous bodily harm, and the like. Class II. Offences against morality, unnatural offences, defilement of girls, incest, rape, abduction, etc. Class III. Injuries to property, arson, obstructing and injuring railways, malicious injuries in general, causing explosions, sending letters threatening to burn or destroy, etc. Class IV. Stealing, robbery, burglary, and similar offences. Class V. Forgery, etc. Class VI. Coining, etc.

Every person who commits any crime comprised in Class I., II. or III., after having been *twice* convicted *anywhere* of a crime of the same class, or who commits any crime comprised in any other class after having been *thrice* convicted anywhere of a crime of the same class, is deemed an *habitual criminal*.

When a person has been convicted of being an habitual criminal he may be sentenced to preventive detention, either during the Governor's pleasure or for such period as the Court may deem advisable.

The effect of such a sentence is as follows :

The habitual criminal is to be confined in some place of confinement specially established for such criminals. The treatment will not be so rigorous as that of ordinary criminals in prison, and the confinee will be required to work at some trade or calling, and will be allowed therefor such remuneration as the Governor shall fix by regulations. This remuneration may be applied for the benefit of the confinee or his wife, children, or relatives, or any reputed child or relative of his.

The Comptroller-General of Prisons is required to report annually on all habitual criminals, and he will be assisted by a committee appointed by the Governor at each place of detention. Every such committee is required to meet at least once every six months for the purpose of personally interviewing the criminals, and preparing reports on them.

The Governor may at any time allow any criminal his liberty or licence. Any such licence may prescribe as a condition that the criminal remain under the supervision and control of any society or person willing to take charge of the case. A licence may be revoked at any time by the Governor.

A sentence of preventive detention terminates if the habitual criminal, having been discharged on licence, has remained free for three years without being convicted of a crime or misdemeanour, or convicted and sentenced to not less than three months for a simple offence.

*The Court of Criminal Appeal*, it is enacted, shall be the full court of the Supreme Court ; but an appeal would always be held before three judges, no more and no less.

The appeal provisions follow the English Act very closely, but they in some cases allow an appeal on the part of the prosecution on matters of law. Thus the Crown can appeal on a demurrer or the like where a judge has decided that the indictment discloses no offence, or where the jury has brought in a verdict of acquittal by direction of the judge—he having decided that there was evidence to lay before them—or against a judgment declaring that the Court had no jurisdiction to try the case. Appeals of this nature will, of course, be very rare indeed. When they do happen there will have been no appeal against a verdict of a jury, but against the refusal of a judge to allow the case to go to a jury. It is true that a judgment on a plea to the jurisdiction may be found on some finding of fact by the jury, but that would not be a finding on the prisoner's guilt or innocence, but on some collateral matter relating to the jurisdiction of the Court. It will thus be seen that the Act recognises fully that when the question of a prisoner's guilt or innocence has been really considered by a jury, and he is acquitted, then the jury's decision is final.

The provisions relating to an appeal by a convicted prisoner are practically identical with those in force in England, but the Court is invested with the power of ordering a new trial in lieu of quashing a conviction. This power



is not contained in the English Act, but its absence has been regretted. In *The King v. Dyson*,<sup>1</sup> the English Court of Criminal Appeal said :

"It is to be regretted that the Legislature when passing the Criminal Appeal Act did not empower the Court to order a new trial, for the present is a case in which it is eminently desirable that such a power should exist. But they did not think to do so, and we have no choice but to allow the appeal."

As in England, there is in the Act an unconditional appeal on a question of law or against a sentence of preventive detention, and an appeal will lie by leave of the Court of Criminal Appeal, or of the judge at the trial upon a question of fact, or by leave of the Court of Criminal Appeal against any sentence.

It is scarcely necessary to summarise the other details of the measure, which are taken from the English Act. Minor points of difference occur in the case of appeals by persons of unsound mind: this is unavoidable, as our law is different from the English. In England, when a lunatic has committed a crime the proper verdict is "Guilty, but he was insane"; in Western Australia the verdict would be "Not guilty on the ground of unsoundness of mind."

The Act also departs slightly from the English Act and gives an independent right of appeal to a person affected by an order for restitution of property.

**Early Closing.**—Act No. 1 of 1912 is mainly for the purpose of settling the vexed question whether the day on which shops must be closed at one o'clock shall be Saturday or Wednesday, and provision is made for the question to be submitted to the Legislative Assembly voters in each shop district.

**Appellate Jurisdiction.**—Act No. 4 of 1912 empowers the Full Court to entertain appeals in Matrimonial Causes. The Act also sweeps away a relic of the old Crown Colony days. The Governor in Council had general power to entertain appeals from the Supreme Court. This species of appeal has long fallen into desuetude, but was nevertheless legally available until the passing of this Act.

**Local Courts.**—Act No. 51 of 1912 is a measure to simplify the procedure in Local Courts. These Courts have jurisdiction up to £100, and the procedure adopted in them followed very closely that of the English County Courts. The system, which often requires the preparation of eight documents (including duplicates) in an action to recover a trifling and undisputed claim, has been found most inconvenient.

This Act is based on the recognition of two undoubted facts, viz. that 90 per cent. of the actions in Local Courts are undefended, and that it really doesn't much matter to a defendant in what court he is sued if he has no defence to the action.

<sup>1</sup> [1908] 2 K.B. 454.

Accordingly s. 4 does away with the necessity of getting leave to issue the summons, and thus abolishes the affidavit and copy. The præcipe and plaint note have been abolished by rules made under the Act, and the particulars of demand are endorsed on the summons. Two documents will thus suffice in all ordinary cases.

Provision had, however, to be made for cases when the defendant should have a defence to the action, and would be prejudiced by being sued in the wrong court. It is provided, therefore, that he can, on filing his notice of defence, raise his objection to the jurisdiction and require the action to be removed to the court nearest to his residence. If after that the plaintiff does not swear an affidavit setting out facts to justify his choice of court, the clerk will transfer the whole proceedings to the court named by the defendant.

Thus, in the quite exceptional case when the action is going to be defended, and the plaintiff and defendant disagree as to the court in which the action should be brought, the plaintiff can be made to swear an affidavit, but in the great majority of actions no such affidavit will be necessary.

No trial is permitted of the question of jurisdiction. The magistrate or the clerk of the court decides the question forthwith and finally on the plaintiff's affidavit. In the absence of objection the court chosen by the plaintiff is deemed to have jurisdiction.

The Act contains provisions for the entry of judgment by default. These provisions are very little different from those contained in the Supreme Court Rules, and are merely an extension of the rules at present in the Local Courts Act providing for entry of judgment on a default summons. It is considered quite unnecessary that the parties should go through the idle formality of appearing in court when the claim is not disputed. The Act accordingly provides for the issue of a summons to which the defendant is required to give a notice of defence, if he intends to defend. If he gives no such notice, judgment may be entered up, if the action be for a debt, forthwith, and if for damages, after the assessment thereof.

**Divorce.**—An amending Act (No. 7 of 1912) brings the law of Western Australia nearly into line with that of Victoria and New South Wales, though, in some respects, it goes beyond those States. Its effect is to permit of divorce being granted on the following grounds: (a) Adultery on the part of the wife; (b) adultery or any unnameable offence on the part of the husband; (c) desertion by either party for five years; (d) habitual drunkenness, coupled, on the part of a husband, with habitual failure to support or habitual cruelty, or, on the part of a wife, with habitual neglect of domestic duties, for four years; (e) imprisonment for three years under a commuted sentence for a capital crime or under a sentence of not less than seven years, or, in the case of a husband, frequent imprisonments aggregating not less than three years in any period of five years, coupled with habitual neglect to support; (f) attempted murder of petitioner or

assault with intent to inflict grievous bodily harm; (g) lunacy on the part of the respondent for at least five years out of the last six, such lunacy being, apparently, incurable.

Adultery on the part of the petitioner is no longer a bar, except when the divorce is claimed on the ground of adultery.

When desertion is the ground relied on, condonation or collusion is a bar.

If the petitioner's own habits have contributed to the wrong complained of, the Court may dismiss the petition; but otherwise the petitioner is entitled to his decree.

The Act adopts the principle laid down in *Armstrong v. Armstrong*,<sup>1</sup> and enacts that a wife who was domiciled in Western Australia at the time of desertion shall be deemed to have retained her domicile, notwithstanding that her husband has since acquired another domicile.

No person is entitled to petition under the Act who has resorted to the State for that purpose.

**Workers' Homes.**—Act No. 8 of 1912 is concerned with two things—the building of homes for workers by the Government, and the making of advances by the Government to workers for the purpose of erecting or purchasing homes.

A worker is defined to be one who is employed in work of any kind or in manual labour, and is not in receipt of more than £300 per annum.

When the home is built by the Government the worker is required to pay the capital value of the house with interest by instalments which may extend over thirty years; but he does not purchase the land; this is let to him on perpetual lease.

The rent is 3 per cent. on the value of the bare land, subject to re-appraisal every twenty years.

The estate and interest of the holder of such a home are not affected by bankruptcy or subject to be taken in execution, and he may not sell except to the Board which administers the Act.

The portion of the Act relating to advances provides for the repayment by the worker of any advance by easy instalments.

With few exceptions no worker can dispose of any home on which an advance is outstanding without the consent of the Board administering the Act.

**Public Service.**—The main provision of an amending Act (No. 10 of 1912) is that appeals against the classification of any office go not to a Board presided over by the Public Service Commissioner, but to a Board under the Chairmanship of the President of the Court of Industrial Arbitration.

**Agricultural Bank.**—An amending Act (No. 18 of 1912) empowers the Bank to make advances by way of loan to any person engaged in agricultural or pastoral pursuits or in any rural industry for any purpose incidental to

<sup>1</sup> [1898] Probate 178.

such pursuits or industry, including the erection of a dwelling-house, but the amount is limited in the case of any agricultural or pastoral pursuits to £2,000, and in the case of any such industry to an amount to be fixed by the Governor.

**Totalisator.**—Act No. 19 of 1912 provides for the issue of licences to use the totalisator to any club, provided no profits of such club are divisible amongst the individual members thereof.

## 8. PAPUA.

[Continued by C. E. HERBERT, Esq., *Deputy Chief Judicial Officer.*]

### Ordinances passed—52.

By far the greater proportion of the Ordinances passed during the year 1912 are consolidating and amending measures introduced in continuation of the work commenced in 1911 preparatory to the intended publication of the Ordinances of the Territory in volume form.

**Health.**—No. 1 repeals four Queensland adopted Acts and two Ordinances, and is an adaptation of the provisions of the South Australian Act of 1898 and of the repealed Ordinance No. 10 of 1898 (relating to infected districts). The Chief Health Officer is charged with the due execution of the Ordinance for securing the sanitary condition of the Territory, and may exercise, in respect to the whole Territory, similar powers to those exercisable by a health authority in its particular district. Sanitary districts may be appointed and health authorities appointed therefor, which latter may be, in the discretion of the Lieutenant-Governor, either a health officer or a sanitary Board of not more than three members. An insanitary condition—which is defined as a breach or non-observance of the sanitary provisions of the Ordinance and also any condition declared to be insanitary by a health authority—must be removed on notice under a penalty. Periodical reports as to the sanitary conditions and outbreak of diseases are to be made to and by the Chief Health Officer. General sanitation is treated under the headings: (1) Of Air; (2) Of Food; (3) Of Premises. No premises shall be permitted to be or to be likely to become a breeding place for mosquitoes.

A district may be proclaimed to be infected, whereupon no person inside it shall leave it, nor shall any person outside hold communication with any person within it without permission.

Public vaccinators may be appointed who must vaccinate every person who presents himself for that purpose. No charge is to be made by a public vaccinator in the service of the Government without permission of the Lieutenant-Governor. By Order-in-Council certain persons, or classes of persons, or all persons living in any specified locality may be required to present themselves, their children and wards, to any public or certificated vaccinator under a penalty of £10 for default.

Model regulations may be made by the Lieutenant-Governor which every health authority may, and if required by the Lieutenant-Governor shall, adopt. Health authorities may also make regulations (not repugnant to the model regulations) for application within their own districts.

**Post and Telegraph.**—No. 13 repeals the adopted Commonwealth Act of 1901 and the Ordinance adopting it, and with few exceptions re-enacts with necessary local references the provisions of the repealed enactments. A "penny postage" for all letters posted in the Territory for delivery therein is established, together with free postage on official letters.

**Infants.**—No. 14 enacts provisions regarding the guardianship and custody of infants and their property similar to those contained in the Queensland Act, 55 Vict. No. 13. It also empowers the Court to order a settlement of any amount recovered by an infant by its next friend as damages in any action of tort for the benefit of the infant; and empowers an infant male, not under twenty years, or an infant female not under seventeen years of age, with the sanction of the Court, to make a valid settlement upon or in contemplation of marriage.

**Insanity.**—No. 15 repeals a Queensland adopted Act, 48 Vict. No. 8. With necessary verbal alterations and exceptions, such as the following, the Ordinance is practically a re-enactment. In cases of emergency and where it is impracticable to obtain without delay the certificates of two medical practitioners, a person may be received into an asylum on the certificate of one practitioner accompanied by the certificate of the justice who makes the order or authenticates the request for admission certifying to the impracticability. The Lieutenant-Governor may make arrangements with the Government of the Commonwealth for the reception into Australia and with the Government of any State for the apprehension, care, treatment and maintenance at the expense of the Territory of insane persons from the Territory; any such person may be sent to any State of the Commonwealth in pursuance of such arrangement, and on discharge is entitled to the expenses of his return to the Territory.

**Trustees and Executors.**—No. 16 repeals portions of the Trustees and Incapacitated Persons Act of 1867 (Queensland adopted) and enacts provisions similar to those of the Queensland Acts, 61 Vict. No. 10, 62 Vict. No. 8, and 2 Ed. VII. No. 7 relating to authorised investments, the powers and duties of trustees, and the powers of the Court in relation to the appointment of new trustees, vesting orders, and the like.

**Small Debts.**—By No. 17, a consolidating and amending Ordinance, the jurisdiction of the Small Debts Court is extended to £100 in cases of debt and damages and to £30 in partnership disputes. The following are also amendments: The Court for the district in which the defendant carries on business, as well as that in which he resides, has jurisdiction conferred upon it. A defendant may set off or counterclaim for any debt or demand against the plaintiff and may recover the excess. The amount of wages recoverable

by infants is extended to £50. Judgment may be entered on confession or by agreement. When goods are seized on execution a landlord may claim not exceeding three months' rent in arrear by handing a written claim therefor to the officer levying under the execution who must sell to satisfy (1) costs of levy and sale, (2) landlord's claim, (3) amount for which execution was issued. An interpleader order may be issued by a registrar of the Court. Wearing apparel, bedding, tools and trade implements to the value of £10 are exempted from seizure under execution. Debts due from garnishees may be attached. Notes of the evidence are to be taken by magistrates in appealable cases, and on appeal to be sent to the Central Court.

**Distillation.**—No. 20 repeals the Queensland adopted Act, 13 Vict. No. 26. The making, selling, erecting and importing of stills are prohibited. With the sanction of the Lieutenant-Governor in Council stills may be used under certain conditions for purposes other than the distillation of spirits. No spirits may be distilled except by persons licensed to do so by any law in force relating to distillation. The Ordinance itself does not provide for such a licence.

**Fire Prevention.**—No. 21 is a re-enactment with unimportant amendments of the provisions of 29 Vict. No. 9, a Queensland adopted Act, which it repeals.

**Deserted Wives and Children.**—No. 22 repeals two Queensland adopted Acts, some of the provisions of which are re-enacted with amendments. In complaints for maintenance of an illegitimate child, if there is an allegation in the complaint that the defendant is the father of the child the justices may adjudge him to be the father on the uncorroborated evidence of the mother unless and until the defendant on oath has denied the allegations in the complaint.

**Animals' Protection.**—No. 23 repeals a Queensland adopted Act, 14 Vict. No. 40. It imposes a penalty not exceeding £50 or imprisonment for a term not exceeding six months upon persons offending against any of its provisions. It is an offence to do any act or observe any forbearance towards any animal which act or forbearance involves cruelty. Certain acts which, when done to any animal, are deemed to involve cruelty are specified in the Ordinance—but by way of example only.

**Apprentices.**—No. 24 repeals two Queensland adopted Acts. Their principal provisions are re-enacted. No child may be apprenticed under the age of fourteen years. A period of probation is permitted. Indentures may be assigned with the consent of two justices and of the apprentice. The term of apprenticeship is determined if the apprentice attains the age of twenty-one years or, with the consent of the proper person, marries before that age. The hours of labour are limited to forty-eight hours per week. No imprisonment is to be inflicted under the Ordinance upon any apprentice under sixteen years of age or any female apprentice. Provision is made for the Government supervision of apprentices bound by justices *in loco parentis*.

**Gaming.**—No. 26 is practically a re-enactment of the provisions of 14 Vict. No. 9 and 16 Vict. No. 2, Queensland adopted Acts which it repeals. It is expressly provided that no prosecutions for offences under the Ordinance shall be commenced without the authority in writing of the Government Secretary.

**Justices.**—No. 28 consolidates and amends the laws relating to Justices of the Peace, their powers and duties. It consolidates the provisions of three adopted Queensland Acts and portions of two Ordinances. Amongst the most important amendments are the following: jurisdiction is given to justices as well as to resident magistrates, and their jurisdiction is made in all cases to extend to the whole Territory. The period of remand under warrant is extended from eight to fifteen days. Warrants of execution are made to apply in relation to the goods and chattels of any person liable under the decision or order of justices to make payment. Power is given to justices to order imprisonment in default of distress, when making the original order for a pecuniary penalty. A justice may postpone the issue of a warrant of execution or of commitment for non-payment of any sum payable under a decision or order. Provision is made for proportional reduction of the term of imprisonment on payment of portion of a fine.

**Companies.**—No. 29 repeals five adopted Acts of Queensland the provisions of which, with the exception of those of the Mining Companies Act of 1886 (50 Vict. No. 19), are now consolidated and amended. The provisions of the Ordinance with some variations and additions are the same as those of the repealed enactments and of the Acts passed in Queensland since 1889. Such variations and additions find a precedent generally in the English Companies Consolidation Act, 1908; they deal with such matters as limited companies having directors with unlimited liability, issue of share warrants to bearer, and the like. The jurisdiction of the Mining Wardens' Courts in reference to registration and winding-up of no-liability companies is taken away. Provision is made for the compulsory registration of companies incorporated outside the Territory and carrying on business therein; as also for registration of agents for such companies. British companies so registered are empowered to hold lands as if they were incorporated under the Ordinance.

**Butchers.**—No. 30 repeals five Queensland adopted Acts relating to the slaughtering of sheep and cattle, the principal provisions of which are re-enacted with amendments. Proclamations may be issued appointing slaughtering places within or within one mile of towns, whereafter no cattle shall be elsewhere slaughtered within these limits, unless for domestic use.

**Fencing.**—The adopted Act of Queensland, 25 Vict. No. 12, is repealed and its provisions re-enacted in No. 31 together with amendments effected in Queensland by 61 Vict. No. 9. The Ordinance does not apply to land owned by natives.

**Married Women.**—The Married Women's Property Ordinance (No. 32)

removes the incapacity of married women to acquire, hold, and dispose of property independently of their husbands, and is similar in its provisions to the Queensland Married Women's Property Acts of 1890 and 1897.

**Employers' Liability.**—No. 33 repeals the adopted Queensland Act of 1886 and re-enacts it with few amendments. The provisions of the Ordinance now extend to seamen.

**Foreign Seamen.**—The Seamen (Foreign) Ordinance (No. 34) repeals and practically re-enacts the adopted Act of Queensland, 16 Vict. No. 25.

**Justices' Fees.**—No. 35 repeals, re-enacts, and amends 4 Wm. IV. No. 5, an adopted Act. Power is given to justices to remit fees in cases of poverty.

**Oaths.**—No. 36 repeals and consolidates three adopted Acts and one Ordinance with no material amendments.

**Liens on Crops and Wool and Stock Mortgages.**—Ordinance No. 37 consolidates and amends certain sections of the adopted Queensland Acts, 31 Vict. No. 36 and 34 Vict. No. 12. The period for registration for liens and mortgages under the Ordinance is extended to forty-two days, and may be further extended by the order of a judge, who also may order the correction of any error, omission, or misstatement in any document or the register to be rectified on terms or otherwise.

**Mercantile.**—The Mercantile Ordinance (No. 38) re-enacts with amendments certain provisions of the adopted Queensland Act, 31 Vict. No. 36. The only material amendment is the inclusion in the Ordinance of provisions similar to those of the English Factors Act, 1889.

**Partnership.**—The Partnership Ordinance (No. 39) repeals certain sections contained in adopted Acts and relating to limited partnerships, the provisions of which are not re-enacted. The Ordinance is framed upon the Queensland Partnership Act of 1891, which is based upon the English law of 1890.

**Life Policies Protection.**—By this Ordinance (No. 40) the interest of an insured under a policy on his life is protected. The policy cannot be made liable for his debts under judgment of any Court, does not pass to his trustee on his insolvency, and the moneys payable thereunder at his death are not available for payment of his debts by any manner whatever except by virtue of a contract or charge made in his lifetime or express direction contained in his will.

**Bread.**—The Bread Ordinance (No. 41) regulates the ingredients, make, and mode of sale of bread.

**Food and Drugs.**—Ordinance No. 42 replaces two adopted Acts of Queensland and by its provisions tends to secure the purity of food and drugs.

**Vagrancy.**—The Vagrancy Ordinance (No. 43) repeals and consolidates two adopted Acts relating to vagrancy.

**Police Offences.**—Ordinance No. 44 consolidates and amends five adopted



Acts. It specifies Acts which are police offences either (1) in towns or (2) throughout the Territory, and provides for the swearing-in of special constables.

**Bills of Sale.**—Ordinance No. 45 repeals certain sections of the adopted Mercantile Act of 1867 (Queensland) and amends the law regarding bills of sale of personal chattels. A bill of sale has no effect until registered. It may be registered at any time. For the purpose of avoidance of assignments as against creditors, the date of first registration is deemed to be the date of execution of a bill of sale. A bill of sale must be registered every three years. A judge may allow rectification of mistakes in registration upon terms or otherwise.

**Registration of Births, Deaths, and Marriages.**—No. 46 is almost purely a consolidating measure affecting two adopted Acts.

**Marriage.**—The Marriage Ordinance (No. 47) consolidates four adopted Acts relating to marriage and re-enacts their provisions with but immaterial alterations.

**Insolvency.**—Ordinance No. 48 consolidates and amends two Queensland adopted Acts and one Ordinance relating to insolvency. The amendments are mostly of omission of machinery provisions of the adopted Acts which were inapplicable to the Territory. With those exceptions and the inclusion among preferential debts of all wages due to native labourers under contract of service, there is no material alteration of the repealed law.

**Arbitration.**—No. 49 repeals the provisions relating to arbitration contained in the Interdict Act of 1867 of Queensland adopted in the Territory. The scheme of the Ordinance is that of the New South Wales Act 29 of 1902, which closely follows the English Arbitration Act, 1889.

**Stallions Licensing** (No. 50).—This Ordinance is one for the improvement of the breed of horses. It comes into operation only at such times and in such districts of the Territory as may be proclaimed. Stallions of over one year of age shall not be kept without a licence. The licence may be refused. Stallions unfit for stud purposes are to be castrated or, at the option of the owner, destroyed.

**Land.**—No. 2 of 1913 amends the Land Ordinance, 1911. It provides for the inspection of improvements on all leases subject to conditions of improvement. Pastoral lessees are required to muster for inspection all cattle and sheep with which the land is stocked in fulfilment of the conditions of improvement. The purposes for which the Crown may acquire or resume lands (native-owned or other) are extended to include hospitals, native reserves, commons, public utility convenience or health, and any public purpose which the Lieutenant-Governor may deem necessary.

**Native Labour.**—No. 3 of 1913 amends the Native Labour Ordinance, 1911. A native is deemed to be recruited when he is solicited and consents, or he offers and his offer is accepted, to engage for or be employed in any form of service or to leave any place where he may then be with a view to or

for the purpose of his being so engaged or employed. Domestic servants may, subject to regulations, be recruited without a recruiter's licence. An employer or an authorised European overseer in his regular employ may, without licence and subject to regulations, recruit natives for service in any capacity. Permits, not extending over one year, may be granted by a magistrate of a division authorising any person recruiting natives in a specified district to take them before some magistrate or officer (to be named in the permit) other than the magistrate or officer mentioned in the principal Ordinance. A written statement is substituted for the statutory declaration as to the home of the recruit, place of recruiting, etc., required by the principal Ordinance to be furnished by a recruiter or employer to the magistrate or officer consenting to the engagement of a native. It must be a true statement and must be made by the person recruiting if he is an European, or if the person recruiting is a native authorised by the Ordinance, the statement must be made by the employer or the licensed recruiter employing the authorised native. Native assistants may be used, subject to regulations, by employers and licensed recruiters. The assistant must be engaged under contract of service as an assistant, and not otherwise. The services of any local native may, subject to regulations, be used in recruiting by an employer or licensed recruiter, if the place where the native recruited is not more than ten miles from (a) the village of the local native so recruiting and (b) some point on the sea coast where the employer or licensed recruiter may be at that time. No native assistant or local native shall have an arms permit. The Ordinance also provides for proof of contract of service by mere production, and for the proof of appointments of officers.

**Finance.**—Nos. 2, 6, 8, 9, 10, 11, 12, 51, 52, 53 and 54 are appropriation and supply Ordinances.

## 9. THE TERRITORY FOR THE SEAT OF GOVERNMENT.

Ordinances passed—4.

**Traffic.**—The Minister of State for Home Affairs is authorised by Ordinance No. 1 to make regulations respecting the care, control, and management of public places, licensing of public vehicles, and other matters relating to the regulation of traffic. No. 3 adds a clause to the Ordinance in regard to the prosecution of offences.

**Rates.**—By an amendment (No. 2) of the Rates Ordinance, 1911, a vendor of land within the Territory is liable for the rates upon it until he has given notice of the sale in a prescribed form to the Minister of State for Home Affairs.

**Public Health.**—No. 4 modifies the New South Wales Local Government Act of 1906 so as to make provision for the care of public health under the direction of the responsible Minister.

## 10. DOMINION OF NEW ZEALAND.

[*Contributed by* JAMES CHRISTIE, ESQ., LL.B., *Barrister-at-Law,*  
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Acts passed—Public and General, 53; Local and Personal, 31.

The Acts not reviewed in this report are purely of local interest.

**Prisons.**—The Prisons Amendment Act (No. 6 of 1912) empowers the Governor, by Proclamation, to make regulations “as to the photographing and taking of measurements of all prisoners convicted or accused of any criminal offence, who are for the time being confined in any prison or police-gaol.” Such regulations may provide for the use of reasonable force in order to ensure compliance therewith, and may also authorise the destruction of records in certain cases.

**Land and Income Tax.**—No. 11 makes various amendments, principally relating to matters of administration, in the Land and Income Assessment Act, 1908. In particular, it provides as follows:

S. 6 declares that where an agent, directly or indirectly, sells or disposes of property of his principal (whether the contract for the sale or disposition of the property is made in New Zealand or elsewhere), the principal shall in respect of such sale or disposition be deemed to be carrying on business in New Zealand, and shall be liable to pay income tax accordingly.

S. 7 empowers the agent of a non-resident trader to apply any moneys of his principal, which may be in his possession or under his control, in the payment of any tax payable by the principal.

S. 17 repeals the existing provisions as to objections to assessments of land tax or of income tax, and ss. 18 to 34 make new provisions in respect thereof. Objections are made in the first place to the Commissioner, and are determined by a stipendiary magistrate, sitting in chambers only. The burden of proof is on the objector in all cases, and the Court may receive any evidence it thinks fit, whether strictly legal evidence or not. On the determination of an objection, the magistrate may cancel or confirm the assessment, or increase or reduce the amount thereof. The decision of the magistrate is final with respect to questions of fact except in cases where the amount of tax in dispute exceeds £200, when each party has a right of appeal to the Supreme Court, and in every case there is a right of appeal as to questions of law. In so far as the appeal relates to questions of fact, the Supreme Court may determine the matter on the case as stated by the magistrate (which must set forth the evidence taken before the magistrate), or may take additional evidence (either orally or by affidavit), or may rehear the whole case.

There is a further right of appeal, on questions of law only, to the Court of Appeal, or such questions may be removed into that Court, but the decision of the Supreme Court is final as to the facts.

As an alternative to the foregoing procedure, an objection so far as it relates to a question of law may, at the option of the taxpayer, be referred directly to the Supreme Court by way of case stated by the Commissioner.

S. 36 provides, in respect of ordinary land tax, for a special deduction, not exceeding £3,500, from the taxable value of the land and mortgages of any taxpayer who is a widow with dependent children.

S. 45 increases the amount of graduated land-tax payable by absentee taxpayers by a sum equal to 50 per cent. of the amount that would be payable by such taxpayers if they were personally resident in New Zealand. This provision applies to the absent shareholders of a company as if the shareholders were assessable jointly in respect of the land owned by the company. For the purposes of this section a taxpayer is deemed to be an absentee if he has not been personally present in New Zealand for at least half the period of four years immediately preceding the year for which he is assessed for graduated land tax; or (in the case of a taxpayer who has acquired all his land in New Zealand within the said period of four years) if he has not been personally present in New Zealand for at least half the period elapsing since he first acquired any such land.

The foregoing provisions are not new, but are in substitution for a similar section of the original Act.

The remaining sections of the Act relate almost exclusively to matters of administration, and do not affect the incidence of taxation.

**Poor Prisoners' Defence.**—No. 12, amending the law relating to justices of the peace, authorises the payment by the Crown in certain cases of the expenses of the defence of accused persons (including the cost of the depositions, the fees of counsel, and the expenses of witnesses). The Minister of Justice is directed to take the necessary steps to procure counsel for such persons on the certificate of the justices committing for trial or on the direction of a judge of the Supreme Court before or during the trial. Before issuing such certificate or giving such directions the justices or judge, as the case may be, must be satisfied that the means of the accused are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence, and that it is desirable in the interests of justice that he should have such aid. The Act is based on the provisions of the English Poor Prisoners' Defence Act, 1903.

**Pharmacy.**—No. 13 makes various administrative amendments of the Pharmacy Act, 1908. In addition, it provides for reciprocity with the Government of any part of the British Dominions in the matter of registration and the recognition of certificates in pharmacy.

It also exempts registered chemists, while engaged in business, from service on juries, and prohibits (subject to a fine of £20) the giving to medical practitioners of commissions on prescriptions.

**Public Trustees.**—In order to cope with the extending business of the Public Trust Office, an Act (No. 17) authorises the appointment of

four local Deputy Public Trustees, each having a seal of office and with power to execute deeds and other instruments, and to perform such other duties and functions of the Public Trustee as he may, in any particular case, by writing under his hand, delegate to any local Deputy.

The other amendments are mainly of an administrative nature.

S. 4 provides for the administration by the Public Trustee, on request, of funds raised by public subscription or otherwise for the relief of persons in indigent circumstances

S. 9 extends the powers of the Public Trustee with respect to the investment of moneys for the time being in the Common Fund. In addition to the modes of investment specified in the principal Act, such moneys may be invested in Crown lands held under perpetual lease, lease in perpetuity, or occupation with right of purchase, and in native land held under lease from a Maori Land Board if the unexpired term of the lease (including any term for which there is an absolute right of renewal) is not less than twenty-one years.

**Registration of Births and Deaths.**—No. 18 makes various amendments, principally of an administrative nature, of the Births and Deaths Registration Act, 1908. S. 3 reduces from seventy-two to forty-eight hours the time allowed for the notification of births within a borough.

S. 12 prohibits the burial of any deceased person without there having been obtained (a) a medical certificate of the cause of death; (b) a coroner's order to bury the body; or (c) a certificate of registration of the death.

S. 20 makes provision for the registration of the births and deaths of Maoris to which the provisions of the principal Act do not apply. Hitherto there has not been any adequate scheme in force for procuring reliable vital statistics with respect to the native race.

**Defence.**—No. 20 makes numerous amendments of the Defence Act, 1909, with a view to facilitating its administration. In particular, ss. 2 to 10 provide for the detention in military custody of persons who make default in the payment of any fines or costs imposed on them for failure to register or submit themselves to military training under the principal Act, or who otherwise commit an offence against that Act.

S. 11 empowers the recovery of fines imposed under the principal Act by way of attachment order made against the employer of an offender. The charge created by the order attaches to all wages or salary becoming due by the employer to the offender at any time while the fine or any part thereof remains unpaid.

Ss. 12 to 31 repeal the provisions of the principal Act as to courts-martial and make new provisions with respect to the constitution of such courts and as to the conduct of their proceedings and the enforcement of sentences.

S. 44 repeals the provisions of the principal Act relating to the Junior

Cadets, and training under that Act will henceforth be restricted to persons over fourteen years of age. The training of junior boys is left in the hands of the public school authorities. S. 6 of the Education Amendment Act, 1912, provides for the issue of regulations "for the instruction in military drill of boys between the ages of twelve and fourteen years." Such drill is to be subject to inspection by an officer to be appointed in that behalf by the Commandant of the Defence Forces.

The remaining sections consist principally of verbal and other amendments of the principal Act, and relate exclusively to matters of administration.

**Widows' Pensions.**—No. 21 extends the benefits of the Widows' Pensions Act, 1911:

- (a) To women whose husbands are detained in an institution for mental defectives and are duly certified to be incurable or likely to be incurable for at least twelve months after the granting of a pension certificate;
- (b) To certain children born out of New Zealand; and
- (c) To illegitimate children whose parents subsequently intermarry.

S. 6 provides an extended definition of the term "annual income," corresponding to the definition of that term in the Old Age Pensions Act.

S. 7 authorises the review and alteration of a pension certificate during the currency thereof in cases where the circumstances of the pensioner are materially altered since the issue of the certificate.

S. 8 provides that, on the death of a widow in receipt of a pension, the guardian of her children to whom the principal Act applies may, with the approval of the Commissioner, receive on behalf of such children the payment to which the widow would have been entitled if she had lived.

**Divorce.**—Act No. 22 amends in various respects the Divorce and Matrimonial Causes Act, 1908. In particular, s. 2 reduces to seven years the period of detention in an institution for mentally defective persons necessary to constitute a ground of divorce.

S. 3 declares that divorced persons may remarry at any time after the making of a decree absolute for the dissolution of a prior marriage, and s. 4 declares that no appeal shall lie from such a decree absolute.

S. 5 declares to be valid any marriage heretofore celebrated after the making of a decree absolute but before the expiration of the time limited for an appeal therefrom.

**Public Service.**—No. 23 repeals all prior enactments relating to the public service (other than Acts relating to the superannuation of public servants) and makes new provision for the regulation thereof.

The essential feature of the present Act is the removal of the service from the control of the Ministers of the Crown for the time being, and placing it under Commissioners who are finally responsible only to Parliament, but who may be temporarily suspended for misbehaviour or incompetence

by the Governor. The following is an outline in brief of the main provisions :

Part I. provides for the appointment of a Commissioner and of two Assistant Commissioners at salaries of £1,300 and £1,000 per annum respectively, with a view to ensuring "the establishment and continuance of a proper standard of efficiency and economy in the public service."

S. 6 prohibits any officer, on pain of immediate dismissal from the service, from soliciting or endeavouring to influence the Commissioner or an Assistant Commissioner with a view to obtaining promotion or increase of salary, and declares that any such officer shall be deemed unworthy of promotion or increase and that it shall not be accorded him. It is also declared to be an offence punishable by a fine of £50 for any person to endeavour to secure the appointment or the promotion of any other person in the public service.

Part II. provides for the division of the service into four main divisions, namely (a) the Administrative Division; (b) the Professional Division; (c) the Clerical Division; and (d) the General Division; and for the grading (within these four divisions) of all officers for the time being employed in the public service. The grading of officers is to be according to the special knowledge or special qualifications and aptitude of the officer and to the character and importance of the work performed or assigned to him. A right of appeal from any decision of the Commissioners is conferred on any person affected by the same, and provision is made for setting up a Board of Appeal to hear such appeals. The said Board is to consist of three members, two of whom are to be appointed by the Governor and the third is to be elected by the officers of the branch of the service from which the appeal comes.

Part III. provides for the internal administration of the service (including the appointment, removal, suspension, transfer, examination, and promotion of officers).

Part IV. preserves existing rights to compensation for loss of office, and to superannuation allowances.

**Protection of Aged and Infirm Persons.**—No. 26 is designed to protect the property of persons who, by reason of age, disease, illness, or physical or mental infirmity, or the excessive use of alcoholic liquors or of any intoxicating, stimulating, narcotic, or sedative drug, are deemed to be unable, wholly or partially, to manage their own affairs. The Act confers on the Supreme Court power, on the petition of any qualified person, to make a protection order in respect of the property of any such aged or infirm person as aforesaid, and in the order to appoint one or more persons as managers to take possession of and control the estate or such part thereof as the Court orders.

Applications for protection orders may be made (a) by the person whose property is sought to be protected; (b) by the husband or wife of such

person; (c) by any near relation by blood or marriage of such person; (d) by the Public Trustee; or (e) by any other person whom the Court thinks proper.

Every manager so appointed has such powers and duties in respect of the protected estate as the Court from time to time defines or directs; and also has the rights and immunities of a trustee as defined by the Trustee Act, 1908. Provision is made for change of managers and also (where a protected person is proved to the satisfaction of the Court to be of sufficient ability to manage his own affairs) for the rescission of any order appointing a manager.

**Finance.**—S. 5 of the Public Revenues Amendment Act, 1912 (No. 28), provides for an annual appropriation of £10,000 out of the Consolidated Fund, to be paid into the common fund of the Public Trust Office, and to be applied from time to time towards the rebuilding or restoration of public buildings destroyed or damaged by fire. The moneys appropriated under this section and for the time being unexpended are not at any time to exceed £100,000.

S. 7 empowers the Audit Office to recover from the individual members of a local authority moneys illegally expended by the local authority, and to pay all moneys so recovered into the ordinary fund of the authority concerned.

The other sections of the Act make minor amendments of the Public Revenues Act, 1910.

**Land.**—The Land Laws Amendment Act (No. 31) makes various amendments of the Land Act, 1908, principally of an administrative nature.

S. 3 provides that, before any area of land is subdivided for disposal by way of sale or lease as a town, a plan of the proposed subdivision, showing the roads and reserves proposed to be made and the name of the town, is to be submitted to the Governor in Council, and the land must not be disposed of until the plan so submitted has been approved by the Governor.

S. 16 authorises the Governor to exchange any area of national endowment land for any area of private land of an approximately equal value, the land so acquired thereupon to become part of the national endowment.

S. 20 provides for the setting aside of land in a kauri-gum reserve, to be subdivided into allotments not exceeding in any case 25 acres in area. Such allotments may be disposed of only to British subjects, to be held under licence to occupy with right of purchase, or under agreement to purchase on a system of deferred payment to be prescribed by regulations. Where any such allotment is held under licence, no rent is to be payable in respect of the first five years of the term.

S. 28 provides that, on the expiry of any lease of a small grazing-run and notwithstanding the provisions in the principal Act as to renewal, the area comprised in any such lease may be subdivided, and the allotments thereof



disposed of by way of lease for twenty-one years with a perpetual right of renewal for further terms of twenty-one years.

Part II. confers upon the owners of leases in perpetuity of Crown land the right to purchase the freehold of the land comprised in their leases in the manner and at a price to be determined in accordance with the provisions of that part. Purchases may be made for cash or by a system of deferred payment extending over a period of not more than nine years.

Part III. makes provision for agreements between the Minister of Lands and the owner in fee simple of any land for the subdivision of that land and for the disposal, by public tender, of the allotments, by way of sale or by way of lease with right of purchase. On the execution of any such agreement the Minister may advance out of the Land for Settlements Account the moneys required for rendering the land available for settlement, including the cost of subdivision and survey and the cost of the construction of roads and bridges. In the case of a sale, the agreement may provide for the payment of the purchase money by annual instalments extending over a period of from ten to twenty years, with interest on the amount for the time being unpaid not exceeding 5 per cent. per annum. In the case of a lease, the term shall be for twenty-one years, and the lessee shall have the right at any time during the currency of the lease to purchase the allotment at a price to be named in the tender. The rent payable under the lease must not exceed 5 per cent. per annum of the price so named in the tender.

S. 49 provides for similar agreements between the Minister and the owners of native freehold land in respect of the disposition by sale or lease of that land. In pursuance of such agreement a proportion (not exceeding one-third) of the proceeds may be paid over to the native owners, and the balance is payable into a Native Land Trust Account to be invested upon trust for such native owners.

Part IV. forms part of the Land for Settlements Act, 1908, and makes various amendments of that Act.

S. 57 authorises the sale in fee simple of settlement land hereafter acquired, and of such land acquired before the passing of the Act, but not disposed of; and s. 59 confers upon the owners of renewable leases of settlement land the right to acquire the fee simple at a price to be ascertained in the manner determined by that section.

The Native Land Amendment Act (No. 34) makes various amendments (principally of an administrative nature) of the Native Land Act, 1909.

S. 17 enables the Governor, on the recommendation of the Native Land Court, to declare by Order-in-Council that any native named in the order shall, as from the date of the order, be deemed to be a European. Such an order is made only in cases where the applicant is possessed of certain educational qualifications and is the owner of sufficient land for his adequate maintenance or is, by reason of some profession, trade, or calling, competent to provide for himself adequate maintenance. The status of the wife or

husband or of any child of a native declared to be a European in pursuance of the foregoing provisions is not affected by the Order-in-Council, but the Governor may, on the recommendation of the Native Minister, declare any such person to be a European irrespective of the requirements as to education, property, or means of maintenance.

**Military Pensions.**—The Military Pensions Act, 1912 (No. 36), provides for the payment out of the Consolidated Fund of military pensions (not exceeding in any case the sum of £36 per annum) to persons who served under the Crown in any of the Maori wars.

The administrative provisions of the Act are practically identical with the corresponding provisions of the Old Age Pensions Act, 1908.

**State Fire Insurance.**—The State Fire Insurance Amendment Act (No. 37) provides for the establishment out of the surplus profits of the State Fire Insurance Office of a reserve fund to meet the actual and contingent liabilities of the office. When the moneys to the credit of the reserve fund are deemed sufficient to meet such liabilities, the balance of the net surplus profits may be distributed by way of bonuses to actual insurers in the said office.

**Education.**—The Education Amendment Act (No. 40) provides, *inter alia*, for (a) the instruction in military drill of boys between the ages of twelve and fourteen years who are attending public schools, and for their inspection by an officer acting under the Commandant of the Defence Forces; and (b) for the appointment of a Director and of inspectors and teachers of physical training.

**Land Agents.**—The Land Agents Act, 1912 (No. 42), provides for the licensing of persons carrying on business as land agents, and prohibits unlicensed persons from carrying on such business. Licences are to be issued to fit and proper persons by the Magistrates' Court on application accompanied by a fidelity bond for £500. A fee of £5 is payable in respect of each licence, and the balance of such fees (after deducting the expenses, if any, incurred in respect of the issue of the licence) is payable to the Hospital and Charitable Aid Board of the district in which the licence is issued. All moneys received by a land agent in respect of the sale of any land are, pending payment to the person entitled, to be paid into a general or separate trust account, and in default of compliance with this requirement the land agent is liable to a fine of £50. Any land agent who (a) fraudulently converts to his own use any such moneys as aforesaid; or (b) fraudulently renders a false account in respect thereof, is liable on indictment to a fine not exceeding £200, or to imprisonment for a term not exceeding five years.

**Plumbers' Registration.**—The Plumbers' Registration Act (No. 43) provides for the establishment of a Plumbers' Board of New Zealand, whose duty is to control the registration of plumbers and to conduct examinations.

S. 16 authorises the Governor by Order-in-Council to make regulations prescribing, *inter alia*, the districts in which sanitary plumbing (as defined)

may be performed only by registered plumbers. Except as to sanitary plumbing within such districts, the Act does not restrict the powers of persons carrying on business as plumbers.

**Teachers' Superannuation.**—S. 3 of the Public Service Classification and Superannuation Amendment Act (No. 44) extends the benefits of the Teachers' Superannuation Fund to persons in the service of the University of New Zealand, or of the Auckland University College, Victoria College, University of Otago, Canterbury College, or Canterbury Agricultural College.

Ss. 8 and 9 increase to £48,000 and £17,000 respectively the annual contribution by the Government to the Public Service and Teachers' Superannuation Funds.

**Local Loans.**—The New Zealand State-Guaranteed Advances Amendment Act (No. 47) deals exclusively with advances to local authorities.

S. 2 fixes the rate of interest chargeable to a local authority at  $\frac{1}{2}$  per cent. more than the rate at which the money was actually raised by the Superintendent.

S. 6 provides that the Superintendent may not hereafter advance moneys to local authorities except for the following purposes:

- (a) the construction of a road, including channelling;
- (b) the construction of a bridge;
- (c) the construction of waterworks for the supply of water within a district;
- (d) the construction of drainage works or irrigation works; and
- (e) the construction of sanitary works.

Where sufficient money to satisfy all applications is not available, preference is to be given to loans for roads and bridges in outlying districts.

S. 8 limits to £60,000 the amount that may be advanced to a local authority within any period of three years.

S. 9 provides for the setting apart, in each of the next ten years, of an amount not exceeding £250,000 to be advanced to local authorities for the construction of roads and bridges in outlying districts. In each of the first ten years of a loan granted out of money so set aside, the Minister of Finance is to pay to the Superintendent an amount equal to 1 per cent. of the loan, and in each of the succeeding ten years an amount equal to  $\frac{1}{2}$  per cent. of the loan. The amounts so paid by the Minister are to be deducted from the amounts from time to time payable by the local authority in respect of instalments of principal and interest.

**Telephones.**—The County Telephone Lines Act (No. 48) authorises county councils and road boards to erect, acquire, maintain, and control telephone lines connecting with any Government exchange the lands of any ratepayer within the district of the local authorities concerned.

For the purposes aforesaid, the local authority may raise the necessary moneys under the Local Bodies' Loans Act, 1908.

**Shipping.**—Ss. 2 to 12 of the Shipping and Seamen Amendment Act

(No 53) apply to New Zealand the provisions of the Maritime Conventions Act, 1911 (Imperial). The remaining sections make various amendments of the Shipping and Seamen Act, 1908. The Act is reserved for the signification of His Majesty's pleasure thereon.

## II. FIJI.

[*Contributed by the HON. ALBERT EHRHARDT, K.C.*]

### Ordinances—30.

**Labour.**—No. 2 effects considerable alterations in the law relating to the employment of indentured Indian immigrants. Stringency is relaxed in many directions, and the severity of penalties is mitigated. An amendment of the definition of the word "task" (s. 2) ensures that the experience of a labourer shall be taken into account in allotting the work to be performed by him. A fine without the alternative of imprisonment is made the punishment for all except the most serious labour offences. In order to obviate imprisonment in default of the payment of a pecuniary penalty, provision is made that fines may be payable by deductions from wages. The apprehension of deserters is facilitated by ss. 11 and 12. Advantage of the occasion of the passing of the Ordinance has been taken to give the Governor in Council power to make regulations for the conduct of festivals by indentured immigrants, and to impose on employers the duty of providing accommodation for the education of the children of their labourers.

In No. 30 power is given to the Governor in Council to regulate the transport of labourers by rail.

**Native Affairs** are dealt with in Nos. 3, 15, and 16. The first re-establishes the Native Lands Commission to inquire into the titles and describe the boundaries of lands claimed by natives. The alienation of lands by native owners except to the Government is prohibited.

No. 15 provides that divorce among Fijians shall be regulated by the Native Regulation Board.

No. 16 directs that appeals from native stipendiary magistrates shall lie not to the provincial Court, but to the European stipendiary magistrate of the district.

**Finance.**—No. 17 introduces a new tariff. The chief alterations are a considerable reduction of the free list and a reduction of the *ad valorem* duty from 15 to 12½ per cent.

The authorised expenditure of the Colony is provided for in Nos. 1 and 18.

**Civil Service.**—Nos. 21 and 22 have reference to civil servants, the former providing for the payment of travelling allowances, and the latter relating to the pay of deceased officials.

**Miscellaneous.**—Recent mechanical inventions have led to the enactment of Nos. 7 and 9, the former regulating cinematograph and similar exhibitions, and the latter the use of motor vehicles, both proceeding on well-known lines. No. 11 provides for the appointment of special constables in the event of an actual or apprehended disturbance. No. 24 regulates the use of the existing light railways in the Colony, with a view to ensuring public safety and convenience. No. 27, the Animals' Protection Ordinance, imposes a close season, and makes other provisions for the protection of game and wild birds in the Colony. Nos. 5, 6, 10, 12, 13, 14, 19, 20, 23, 25, and 28 effect amendments in existing Ordinances in comparatively small points of detail, and do not seem to call for individual comment.

## 12. WESTERN PACIFIC.

[*Contributed by the HON. ALBERT EHRHARDT, K.C.*]

### King's Regulations—11.

No. 2 provides for the management of the Department of Customs and the collection of the customs revenue in the Gilbert and Ellice Islands. It follows the lines of the cognate Ordinance of Fiji.

No. 4 deals with the fees to be taken by port officers in the Gilbert and Ellice Islands for the performance of duties under the Merchant Shipping Act, 1894.

No. 6 validates and sanctions the native laws of the Gilbert Islands and the Ellice Islands passed in the year 1894. Death sentences are not to be executed without the authority of the High Commissioner.

No. 7 deals with licences to be obtained by vessels trading in the Gilbert and Ellice Protectorate, and prescribes the fees to be paid therefor.

No. 8 amends the existing labour law of the Solomon Islands relating to the hours of labour and the penalty for neglect of work.

No. 9 applies to the whole of the Western Pacific except the New Hebrides, and governs the use of wireless telegraphy therein.

No. 10 deals with the use and sale of explosives in the Solomon Islands.

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## V. SOUTH AFRICA.

### 1. UNION OF SOUTH AFRICA.

[*Contributed by OSWALD PIROW, ESQ., Barrister-at-Law ; Honorary Secretary of the Society of Comparative Legislation for the Union of South Africa.*]

**Native Affairs in Natal.**—No. 1 amends certain laws in force in Natal, *inter alia*, by giving the Governor-General power to delegate to the Minister

of Native Affairs matters which on May 31, 1910, were administered by Native Trusts.

**Finance.**—Nos. 2, 3, 4, 9, 10, 11, 21, 23, 24, 25, 26, and 30 are Appropriation Acts for purposes of public service and public works such as railways, harbours, and betterment schemes.

**Police.**—No. 14 provides for the establishment, organisation, and control of the South African Police. Among the sections of this Act which are of general interest are s. 23, by which the property of the force cannot be seized or attached for the debt of a member of the force; s. 24, by which any salary or allowance cannot be assigned or attached; s. 29, allowing immunity for acts done under irregular warrant; s. 30, prescribing a limitation (four months) of actions in respect of anything done in pursuance of the Act; and s. 31, authorising the appointment of special constables.

**Transvaal and Orange Free State Land Settlements.**—No. 15, an Act to facilitate the issue of Crown grants to certain settlers in the Transvaal and the Orange Free State and to amend the Irrigation Settlements Act, 1909, Orange Free State, is not of general interest.

**Judges' Salaries and Pensions.**—No. 16 is described as an Act to provide for and regulate the salaries and other emoluments and the retiring pensions of the judges of the Supreme Court of South Africa hereafter appointed, and the retiring pensions of such judges as were heretofore appointed at and subsequent to the establishment of the Union, and for matters relating to the retirement from office of such judges. The only matter of general interest is contained in s. 6, which fixes the age of compulsory retirement of all judges to be appointed in the future at seventy years.

**Fencing.**—No. 17 consolidates and amends the laws in force in the several provinces of the Union relating to the fencing of farms and other holdings. An owner is entitled to an advance from the Land Bank towards the cost of erecting dividing fences (s. 3). Compulsory fencing to prevent the spread of stock diseases may be decreed by the Minister, the cost of such fencing to be paid out of moneys specifically appropriated by Parliament, but to be refunded by the owner of the land in the course of several years (chap. ii. ss. 9 and 10). Leaving gates open or not closing gates found open, climbing through fences, malicious injury to fences, or failure to give name and address after commission of any one of those acts is made an offence under the Act and punishable with fine and imprisonment (chap. iii. ss. 19-24). A summary way of recovering damages from any person convicted of one of the above offences is provided (chap. iv. s. 27).

**Land Bank.**—No. 18 establishes and regulates the management and control of a Land and Agricultural Bank for the Union. The business of this institution is described as (a) to advance money to farmers on mortgage of land within the Union; (b) to advance money to, and to guarantee the performance of contracts by, co-operative societies; (c) to advance money to farmers holding land under agreement of purchase from the Crown or holding land

from the Crown under a lease the unexpired period whereof is ten years or more (chap. ii. s. 18). These advances are to be made for the purpose of (a) improvements, e.g. farm buildings, fences, tanks, etc.; (b) purchase of stock or plant of all kinds and of agricultural requirements generally; (c) the discharge of existing liabilities on land or, in special circumstances, any other existing liabilities; (d) the payment of costs incidental to the subdivision of land held in undivided shares; (e) the establishment and promotion of agricultural industries, including in addition to other such industries tobacco, dairy, and like industries, and the cultivation, sale, and exportation of fruit; (f) the purchase of land for any of the purposes (a), (b) and (e) by a person or group of persons whose financial resources are deemed adequate to carry on a purpose described in any of those paragraphs (s. 19). The funds of the Bank shall be the capital of the existing provincial banks and such moneys as Parliament may appropriate (s. 20). Advances are for the period of thirty years, a percentage of the principal and the interest being repayable half-yearly (s. 24).

Any law to the contrary notwithstanding, a member of a co-operative society shall remain liable for the debts of the society incurred whilst he was a member even after his withdrawal, until the Board is satisfied that the society and its remaining members are capable of discharging the debt or obligation (s. 32). Advances by the Bank for dipping tanks or fencing are regulated by ss. 33 and 34. As liberal as the advances are under this Act, so efficient are the remedies given to the Land Bank, which may in any case where the money lent is not properly applied or in jeopardy (i) refuse to pay any portion of the advance which has been approved but not yet paid; and (ii) three months after demand by registered letter for repayment of the advance and after due notice to the mortgagees and *without recourse to a court of law* enter upon and take possession of and sell by public auction the whole or any part of the security for the advance upon such terms and conditions as appear under all circumstances to be just; and (iii) transfer such land or other security to the purchaser and give a good and valid title thereto, notwithstanding that it may then be hypothecated or subject to a lien or charge in favour of some other person. Additional remedies are given where advances have been made to co-operative societies. Bys. 46 the Bank may hold land only temporarily or for business premises.

**Public Service and Pensions.**—No. 29 is described as an Act to provide for the organisation of and discipline in the public service of the Union and to regulate the retiring pensions or other financial benefits payable to persons appointed on or since May 31, 1910, to that service and to certain other persons. In many respects this Act follows the provisions, dealing with similar matter, of the railway and harbours service, more especially as regards assignability, etc., of pensions (s. 61), effect of insolvency on such pensions (s. 62), claims under laws governing compensation to workmen injured, etc. There are, however, also independent noteworthy provisions. By s. 2 a Public

Service Commission is to be appointed in conformity with s. 142 of the South Africa Act, 1909, and to it are entrusted practically all matters relating to appointment, promotion, discipline, retirement, and superannuation of persons employed in the public service. S. 4 makes the matriculation of the Cape of Good Hope University or an equivalent examination a necessary qualification for every appointment to clerical posts in the administrative and clerical division. Qualifying examinations are prescribed for all higher posts (s. 7), while the standard as regards magistrates and public prosecutors is raised to the extent that these positions can henceforth be filled only by duly qualified advocates or solicitors. Appointments to the administrative and clerical divisions may be on probation (s. 10). S. 11 re-enacts s. 6 of the railways and harbours service as regards language qualifications of civil servants. Provisions are made for transfers to or from defence and police and prisons services and public service. Different kinds of funds are established by s. 19 : (i) the Union Administrative and Clerical Division Pension Fund ; (ii) the Union General Division Pension Fund ; (iii) the Union Defence, Police, and Prisons Pension Fund. With certain exceptions (sub-s. 5) contributions to these funds are of course obligatory (s. 20).

**Private Bill Procedure.**—No. 20 deals with the care, custody, and inspection of documents deposited with Parliament for the purpose of private bills to be introduced therein, regulates the reference of bills to provincial councils, and provides for the taxation of costs incurred in the promotion of or opposition to such private bills. In this last connection s. 8 enacts that when the committee report that the Preamble is not proved the opponents are entitled to recover costs, while s. 9 provides that when the committee report that the opposition is not well founded, the promoters are entitled to recover costs.

**Administration of Justice.**—No. 27 introduces important provisions relating to uniformity of the administration of justice throughout the Union. By s. 3 a civil summons issued out of a superior Court may be served on a defendant in any part of the Union whether within or outside of the jurisdiction of such superior Court. The time limit for appearance in such a case is twenty-one days if the summons is to be served at a place 50 miles or more from any railway station, fourteen days in any other case. Extending the principle of s. 3, no attachment to found jurisdiction and no edictal citation are to be authorised where defendant resides within the Union (s. 5). Writs of arrest of the person may be executed throughout the Union in the same way as the attendance of a witness residing within the Union, but out of jurisdiction, may be secured by service of an endorsed subpoena (ss. 6 and 8). The evidence of persons residing outside the jurisdiction of a superior Court, but within the Union, may be taken by interrogatories.

Criminal summons may be served and criminal warrants executed throughout the Union (ss. 10 and 11). Proceedings may be removed from one provincial or local division to another provincial or local division (s. 14) in the same way as judges of any provincial or local division may be appointed



to act in other divisions (s. 15). S. 16 interprets s. 109 of the South Africa Act, 1909, by laying down that the hearing of an appeal elsewhere than at Bloemfontein shall not be deemed to be for the convenience of any suitor unless exceptional circumstances exist.

As an extension of s. 3 of this Act s. 19 provides for the transmission of summonses, writs, etc., by telegraph, while s. 20 makes a telegram stating issue of warrant or writ of arrest authority for the execution of the same. Finally, no security for costs need be given by a plaintiff domiciled out of jurisdiction but within the Union, and no writ of arrest shall issue for a defendant in the like case.

**Railways and Harbour Service.**—No. 28 is a lengthy Act providing for the organisation and discipline of and the payment of retiring allowances and financial benefits to persons in the employment of the Department of Railways and Harbours of the Union. The Act is not of sufficient general interest to set it out in detail, but quite a number of sections are noteworthy.

S. 6 deals with the all-important language qualification, and provides that no officer entering the service after the commencement of this Act who is appointed to a clerical post therein, and who has not passed a prescribed examination in both official languages, shall be promoted to any higher grade than to which he has attained in five years from the date of his first appointment.

S. 24 establishes a new Superannuation Fund, membership of which is to be compulsory in the case of a servant admitted to permanent employment (s. 28), the contributions to the fund to be 3 per cent. per annum on such servant's pensionable emoluments, such contributions to be deducted from salary or wages (s. 30). The administration, for its part, is to pay at the end of each month a sum equal to the aggregate of the amounts paid by the members into the fund (s. 37). Contributions are payable to a deceased member's representative only for the benefit of a widow, widower, children, or step-children, or a father, mother, brother, or sister dependent upon him for support and maintenance, but not any other collateral or more distant relative (s. 50). Female servants of the administration are entitled to membership under the Act (s. 58). A new Pension Fund and a new Widows' Pension Fund are constituted by s. 62. By s. 77 members' rights to compensation under the Workmen's Compensation Act, etc., are preserved. Pensions are not assignable or executable (s. 78). On insolvency of a beneficiary the annuity shall forthwith determine, and payment of the whole or part shall only be made to the insolvent for his personal use or to his dependants.

**Miners' Phthisis.**—No. 19 is one of the most important Acts of the year. The Act of 1911 is supplanted by one the main features of which are the establishment of a fund out of which compensation is to be paid to persons suffering from phthisis, and the constitution of a Board necessary to deal with that fund. A list of mines in which the mineral dust causes the

disease is to be published in the *Gazette* (s. 2). An addition to or removal from the list of mines liable to contribution may be made on the petition of one-third of the owners, lessees, or their employees (s. 15).

A Miners' Phtisis Board of three members, both owners and miners being represented, holding office for three years, is constituted, and rules are laid down as to the meetings, officers, etc. (s. 3).

A Compensation Fund is established, consisting of contributions from employers, interest on investments, Government contributions, and balances of funds established under Act 34, 1911 (s. 4).

Assessments for the purpose of levying contributions from employers are made quarterly, and in proportion to the average monthly number of employees during the preceding three years. A maximum figure, being a proportion of the profits during the previous financial year, is not to be exceeded, at any rate as long as the Government contribution is not exhausted (s. 5).

The Board may accept a lump sum, to be determined by an actuary, in lieu of future contributions (s. 6).

What is not exhausted under s. 4 of the Government contribution of £100,000 goes to the Insurance Fund (s. 7).

An Insurance Fund is established, and consists of contributions by employers, interest on investments, fines, and donations or legacies (s. 8). Contributions under s. 8 are payable on or before the 10th of every month, and are calculated at a rate of 5 per cent on each miner's earnings during the previous month for two years from August 1, 1912, and after that date at  $7\frac{1}{2}$  per cent. of such earnings. During the first two years half of the contributions may be deducted from the miner's wages, after that one-third. Monthly statements have to be sent to the Board, on oath if required. Monthly time-books and pay-sheets have to be preserved (s. 9).

Annual valuations of the funds are to be made (s. 13), and on the basis of the annual valuation an increase or decrease of the employer's contributions may be ordered by the Minister (s. 14).

An award may be made to any miner who satisfies the Board that he has contracted phtisis, and has been employed for two or more years out of the preceding four on a listed mine (s. 16). On receipt of a claim the Board shall order a medical examination of the claimant. The certificate of the two medical advisers appointed is conclusive, and awards are based on it (s. 23).

The Board may make orders for the production of any evidence which it thinks necessary (s. 17). Awards may be upset or varied on grounds of fraud or error (s. 18). Awards of monthly payments may be reviewed by the Board (s. 19). No Court of Law can review or upset an award made by the Board (s. 20).

The scale of benefits awarded by the Board varies with the degree of the disease, but in no case does it exceed £8 a month or £400 in all. Beneficiaries and their dependants may also be granted a free passage

outside the Union, and in case of the death of beneficiaries the sum or balance due may be paid over to their dependants. Medical and burial expenses may be paid up to £20. No miner who has, on entering employment, wilfully and falsely endorsed on his certificate that he is free from the disease can claim compensation (s. 21).

Any other persons employed on underground work may elect to come under the Act on having the necessary deductions made from their wages (s. 22).

Employers must have applicants for employment medically examined, and, except in cases of persons discharged from listed mines, are not to employ men underground who are not physically sound and free from phthisis and tuberculosis (s. 25).

A list of qualified medical advisers is published by the Minister and their fees are fixed by regulation (s. 28).

Natives are also entitled to compensation varying with the degree of the disease from £1 to £20, and from £30 to £50. A medical certificate is, of course, required, as in the case of white underground workers. In case of the death of such a native his dependants are entitled to the sum of £10 (s. 30).

Contracting out of the Act is prohibited (s. 31). Contributions under the Act are preferred to all other debts of the employer, except wages, etc. (s. 32). The Minister may authorise a general medical examination on any mine (s. 34). Investigations relative to miners' phthisis may be made and paid out of money specifically appropriated by Parliament for this purpose (s. 37).

**Land Settlement.**—No. 12 is an Act passed for the purpose of making further provision for the allotment for settlement purposes of Crown land, including land acquired for such purposes, and for the improvement and disposal of such land, or for other purposes in connection therewith. S. 3 allows the Governor-General to appoint Land Boards for any area in the Union, sets out the functions of such Boards, which are to advise the Minister on matters entrusted to them under the Act, and deals with its constitution, the filling up of vacancies, etc. Ss. 6 and 7 try to assure an impartial working of the Board by depriving members of their votes in matters in which they are interested, and by making bribery and corruption special offences. S. 10 empowers the Minister, out of the moneys appropriated by Parliament, to acquire land for the purposes of the Act. The Minister may even buy particular land where the applicant under the Act contributes part of the purchase price (s. 11). Every proposal to acquire land under either of the last two preceding sections shall be referred by the Minister to the Board for consideration and report (s. 12). S. 15 lays down rules as to the division, survey, and valuation of the land acquired for the purposes of the Act.

S. 17 deals with allotments to *oversea applicants*. Notice may be given in the *Gazette* and in one or more oversea papers, and applications lodged

with the High Commissioner in the United Kingdom, or elsewhere with such person as the Governor-General may appoint. No application shall be entertained unless the applicant (*a*) be at least eighteen years of age; (*b*) possess sufficient qualifications to develop his holding; (*c*) be of good character; (*d*) intend in good faith to occupy personally and develop his holding; (*e*) possess a reasonable amount of capital to be able to work his holding; (*f*) declare that he will work the holding exclusively for himself and his family (s. 19). A statement of the number of applications, etc., is to be made to Parliament each session (s. 23). On allotment a lease for five years is issued in respect of the holding, a rent of from 2 to 3½ per cent. being payable on the purchase price as notified in the *Gazette* (s. 24). The option to purchase the holding on certain terms is to be a condition of every lease (s. 27). S. 28 is a cardinal provision of the Act, making residence on the holding compulsory. Assignment and sub-letting are prohibited (s. 35). Security shall be given for improvements existing at the date of allotment (s. 29). Every holding shall during the period of the lease be improved to the extent of 10 per cent. of the ultimate purchase price (s. 30).

S. 31 reserves all mineral rights, etc., to the Crown. But compensation is payable to the lessee for damage caused by prospecting, etc. (s. 32).

Moneys owing to the Government to be a first charge on a holding (s. 37). Such moneys may be set off against *any* claim of lessee, *e.g.* for compensation under s. 32 (s. 38).

S. 43 deals with the important subject of a Crown grant of a holding. Lessee is *entitled* to such grant where (1) he has been in possession for ten years; (2) all moneys due to Government have been paid, (3) all provisions of the Act have been complied with; (4) the lessee is a British subject.

S. 44 provides for Government aid to lessees out of moneys specifically appropriated by Parliament for the purpose of developing the holdings under the Act.

All claims for compensation under the Act shall be settled by arbitration (s. 45).

**Defence.**—No. 13 occupies by reason both of its bulk and its general importance the first place in the legislation of 1912.

S. 1 lays down the liability on the part of every citizen for service in defence of the Union between the ages of seventeen and sixty years. Every citizen is also liable to peace training, which he *must* complete between the ages of twenty-one and twenty-five, but which he *may* undergo between the ages of seventeen and twenty-one (s. 2). But only 50 per cent. of all citizens liable shall actually undergo their peace training (s. 3). To make persons liable to serve in war proficient with the use of military weapons of precision, (*a*) every citizen liable to peace training who has not undergone such training before his twenty-first year *shall* for four years serve as a member of a Rifle Association; (*b*) any other citizen *may* join such an association (s. 4). Service in the Royal Naval Volunteer Reserve, if this

body is created under the provisions of the Act, shall exempt from liability under both ss. 1 and 2 (s. 5).

In populous areas boys between the ages of fourteen and seventeen may be required to undergo a prescribed course of training as cadets unless the parents and guardians lodge written objections (s. 6).

The Act until and in so far as Parliament by resolution otherwise determines applies only to persons of European descent (s. 7). Persons of bad character are excluded from service (s. 9).

Employers shall provide all facilities to enable a citizen to carry out his duties under the Act, and in default shall be guilty of an offence (s. 8).

The Defence Force shall comprise: (i) The Permanent Force; (ii) the Coast Garrison Force; (iii) the Citizen Force; (iv) the Royal Naval Volunteer Reserve; (v) any Special Reserve established under the Act (s. 10). The Permanent Force is to consist of instruction staff, etc., and persons charged with the maintenance of order within the Union (s. 11). The South African Mounted Riflemen, a permanent battery of artillery being attached to each regiment, shall form part of the Permanent Force (s. 12). For the protection of the defended ports of the Union a Coast Garrison Force is constituted, the Volunteer Corps of Cape Garrison Artillery being assigned to this Corps (s. 13).

Units of the Regular Army of Great Britain may be specially engaged by the Governor-General (s. 14).

The Governor-General may make provisions for the joint defence of ports by Imperial and Union Forces (s. 15).

The constitution of the Citizen Force includes: (i) Active Citizen Force; (ii) Citizen Force Reserve; (iii) National Reserve. (Members of [i] receive pay whilst undergoing their training) (s. 16). The Active Citizen Force consists of officers and non-commissioned officers and men undergoing their training (s. 17), and is to be split up into units, which are as far as possible organised territorially (s. 18). Aviation schools, etc., may be established (s. 19). The Citizen Force Reserve consists of two classes, "A" and "B," the former consisting of citizens under the age of forty-five who have undergone their peace training, and who are reservists of the unit in which they have served, the latter consisting of all other citizens under forty-five years who have served in a Rifle Club and are liable to service (s. 20). The National Reserve shall consist of all citizens of the Union who, not being members of any other portion of the Defence Forces, are liable to render personal service in time of war (s. 21).

The Governor-General is authorised to raise a body of volunteers for naval service in case of emergency called the South African Division of the Royal Naval Volunteer Reserve (s. 22).

As regards discipline and administration of this body the regulations for the Royal Navy are, *mutatis mutandis*, to apply (s. 23).

Field and Police Reserves may be established for the South African

Mounted Riflemen (s. 25), and the Coast Garrison Force Reserve is to consist of all citizens who have completed their training in the Coast Garrison Force, and are under the age of forty-five (s. 26).

Ss. 28-49 deal with matters of administration, such as officers' appointment, retirement, promotion, incorporation of existing Forces, etc., etc.

A South African Military College is to be established (s. 50), where advanced classes of military instructions may be provided (s. 51), and officers and non-commissioned officers are to know both languages (s. 52).

Each citizen, except in the cases provided for in the Act, shall register himself on attaining his seventeenth year (s. 53). Between the ages of seventeen and twenty-one citizens may choose their units in their particular districts (s. 55). A Provisional Ballot List in respect of citizens is to be prepared annually in each district (s. 56). The number of citizens to be trained is fixed annually by the Governor-General, and published in the *Gazette* (s. 57).

The course of training in each year shall be as prescribed, but shall not exceed (a) thirty days for the training year during which a citizen is being trained as a recruit; (b) twenty-one days during any other training year (s. 64).

Any portion of the Defence Force may be called out to prevent or suppress internal disorder (s. 79).

Only persons physically unfit, officers of Parliament, judges, etc., are exempt from active service in time of war (s. 82).

Ss. 84-94 deal with special powers of the Governor-General in relation to defence, security of ports, commandeering, expropriation and acquisition of land for defence purposes, railway facilities in time of war, censorship of telegraphic and postal matter, etc.

With the exception of the clauses set out in the fifth schedule of the Act, the Army Act is to govern the Defence Forces of the Union (s. 95).

A Magistrates' Court or any Superior Court of the Union may try offences against the Act, and against the Military Code (s. 97). Special offences such as desertion, obstructing Defence Forces, refusing information, personation, and the procedure and penalties in respect of such offences are dealt with in ss. 100-115.

Provisions are made for compensation out of the Consolidated Revenue Fund in case of death, injury, or disease on active service or duty (s. 118).

**Irrigation.**—No. 8, an Act to consolidate and amend the laws in force in the Union relating to the use of water of public streams for domestic, irrigation, and industrial purposes, and to provide facilities for the irrigation of land and use of water, is hardly of as much interest to the world at large as it is to *droutridden* South Africa. Still, there are many important points of general law dealt with. An Irrigation Department with wide powers and functions is established (ss. 3 and 4). Irrigation and drainage works may be constructed by the Government (s. 7). An owner is entitled to the

exclusive use of the water in private streams (s. 5), but there shall be no right of property in public water (s. 9). The water of a public stream is to be subject to primary, secondary, and tertiary uses, *i.e.* to be used for domestic, irrigation, and mechanical or industrial purposes (s. 11). Every riparian owner is entitled to a reasonable use of the normal flow of a public stream, and may store any water to which he is entitled, and for which he has no immediate use, as well as any surplus or flood water of such stream (ss. 12-14).

The Water Court may grant a riparian owner permission to abstract and store surplus water of a public stream for tertiary uses (s. 20), or even to use a defined quantity of the normal flow for such purposes (s. 21).

No person is allowed to develop water power greater than 10 h.p. without the permission of the Minister, and greater than 25 h.p. without the permission of the Governor-General.

All subterranean water in dolomite formation shall, until the contrary be proved, be presumed to flow in defined channels, and an owner of a farm shall, without the consent of Parliament, not be entitled to sell, give away, or otherwise dispose of such water (s. 26).

Ss. 27-45 deal with Water Courts, their composition, jurisdiction, orders, and awards, procedure in and contempt of such Courts, etc.

Ss. 46-99 make provisions for the constitution of River Districts, and a River Board for every such district.

Upon the petition of any three or more riparian owners stating that it would be expedient to have a combined system of irrigation for any specified area, and that recourse should be had to artificial means of storing or supplying water in that area, such area may be constituted an irrigation district (s. 80). For every irrigation district there shall be an Irrigation Board, which has, *inter alia*, the power to recover irrigation rates, to borrow money, to make by-laws, etc. (ss. 83-94).

Provisions are made for the expropriation of land by the Governor-General for irrigation purposes. A person who, having a right to the use of water, desires to employ it for domestic or irrigation purposes shall be entitled to claim under the Act certain servitudes as against an adjoining owner, *viz.* a servitude of aqueduct, a servitude of storage, or a servitude of abutment (s. 102). Such servitudes are, if disputed, acquired by application to the Water Court after notice in writing to the owner, mortgagee, lessee, etc., who will be affected by the grant.

Finally, the Act deals with irrigation loans, the usual provisions as to security, redemption, etc., being set out in ss. 117-28.

The enhanced value of lands improved by irrigation works constructed after the commencement of this Act shall for ten years after the completion of such works not be liable for local rates (s. 132).

Whenever any person is convicted by a Magistrates' Court for any offence under this Act, and it appears that such person by that offence has caused

damage to any River Board or Irrigation Board or owner, the Court may at the written request of such board or owner inquire summarily into the amount of damage so caused (s. 135).

## 2. CAPE OF GOOD HOPE.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—14.

Only two of the Ordinances of the year possess any general interest—the Hospitals and Charitable Institutions Ordinance and the Education (Language) Ordinance.

**Hospitals** (No. 5).—The scheme of this Ordinance is to constitute Hospital Boards for every district, such Boards to have vested in them the control and management of all State-aided hospitals, dispensaries, and convalescent homes within the district, with power to establish—with the sanction of the Administrator—new institutions, including hospitals for medical and surgical treatment, dispensaries, maternity homes, convalescent homes, sanatoriums and institutions for any other purpose declared by the Administrator to be a public charitable purpose. Provision is made for payment by the Administrator to the Boards of a subsidy limited by reference to the voluntary contributions. In case of a deficit, the Administrator may authorise payment of such deficit out of funds at the disposal of the Rural or Divisional Council of the District.

**Language in Schools** (No. 11).—The medium of instruction of every pupil in all the standards in any public school up to and including the fourth standard is to be the home language of the pupil; but the parent of every pupil is given the right to demand that the other language shall be gradually introduced, and thereafter regularly used as a second medium of instruction. After the fourth standard, provision is to be made for the instruction of the pupils through the medium of each language, and the parent may choose one or both. Teachers must qualify in both languages.

The other Ordinances are of a local character.

## 3. NATAL.

[*Contributed by* R. ESCOMBE WILLCOCKS, ESQ.]

Ordinances passed—12.

**Game** (No. 2).—The Game Ordinance repeals the Game Acts (1906, No. 8;<sup>1</sup> 1910, No. 18) of the Colony of Natal. Under this Ordinance the killing of game (the animals to be considered as such are given in the schedule), the granting of licences, and the close season are regulated.

<sup>1</sup> See Journal, vol. viii. p. 352.



Power is given to the Administrator to establish game preserves (s. 17). It is forbidden to employ natives to hunt game (s. 21).

**Roads** (No. 5).—The Road Traffic Ordinance is to be read with Laws No. 13 of 1865 and No. 33 of 1874, and its object is to make further provision for the regulation of traffic upon the roads of the Province. The word "road" in this Ordinance includes "land lying within a distance of 50 ft. measured outwards in each direction from the centre of any roadway in actual use." Powers are granted to the Administrator to make rules (a) regulating, in proportion to the number of wheels or to the weight of the load, the character and the maximum and minimum width of the tyres of all vehicles;<sup>1</sup> (b) regulating heavy traffic generally; (c) providing for the giving of security by any person against special damage to any road, bridge, ferry, etc.; (d) registration of motor and other power-driven traffic.

**Shops** (No. 10).—The Shop Hours Amendment Ordinance extends the provisions of s. 9 of the Shop Hours Act, No. 36, 1905.<sup>2</sup> The Administrator, on the application of an urban authority, may declare the area of that authority to be a special place within the meaning of the Ordinance, *i.e.* special closing times can be enforced.

**Fisheries** (No. 31).—The Fisheries Law Amendment Ordinance is to be read with No. 31 of 1906.<sup>3</sup> This Ordinance empowers the Administrator to make regulations to prevent the pollution of water of all bays, creeks, lagoons, estuaries or other territorial waters, and of all coastal streams. The Ordinance further provides that no person may engage in the whaling industry without a licence, for which the annual charge is £50.

#### 4 ORANGE FREE STATE.

[*Contributed by R. ESCOMBE WILLCOCKS, ESQ.*]

##### Ordinances passed—6.

**Education** (No. 2).—The School Act and Classification of Schools and Teachers Amendment Ordinance amends the School Act, 1908.<sup>4</sup> The Ordinance repeals ss. 15, 16 and 17 of the principal Act and enacts that the "medium" of instruction of every pupil in every public school up to the fourth standard shall be in the child's "home language" (*i.e.* either English or Dutch, as the case may be), provided that the parent of any pupil shall have the right to claim that the second language shall be gradually introduced and thereafter regularly used as a second medium of instruction (s. 3 [1]).

It is provided that both English and Dutch shall be subjects of instruction for teachers during their course of training (s. 17). It is further expressly provided that teachers engaged before this Ordinance was passed shall not

<sup>1</sup> Cf. Webb, *Story of the King's Highway*, pp. 74-5.

<sup>2</sup> See Journal, vol. vii. p. 485.

<sup>3</sup> See Journal, vol. viii. p. 354.

<sup>4</sup> See Journal, vol. x. p. 366.

be penalised either on account of their lack of knowledge of English or Dutch, and facilities shall be offered for a knowledge of both languages to be obtained.

**Pounds (No. 3).**—The Pounds Ordinance establishes Government and municipal pounds and provides for the appointment of pound masters. The duties and liabilities of pound masters are set forth. The Ordinance also deals with impoundment of stock. Any landowner finding stock straying on his land may send them to the nearest pound, and no landowner may allow cattle to stray on his land for more than fourteen days. Provisions are further laid down for the sale of impounded stock.

**Municipal Corporations (No. 4).**—The Municipal Corporations and Village Management Ordinance amends the Municipal Corporations Ordinance, 1903, the Village Management Ordinance, 1904, and the Municipal Corporations (Supplementary) Ordinance, 1905. This Ordinance deletes the term "resident householder" and substitutes the term "householder." The Ordinance provides for an annual election of councillors.

**Roads (No. 6).**—The Roads Ordinance consolidates the laws relating to the constitution and maintenance of certain roads and defines the respective rights of landowners and travellers in connection therewith. The Ordinance lays down that "public road" means and includes (a) "any road which the public had a right to use, or of which the public had undisturbed and continuous use for a period of not less than two years immediately preceding October 12, 1899"; (b) "any road which shall have been in undisturbed and continuous use by the public for a period of not less than fifteen years subsequent to May 31, 1902"; (c) "any new main, district, or farm roads proclaimed under the powers of this Ordinance."

Roads are divided into the following classes: Public Roads, Main Roads, District Roads, Farm Roads. Proclaimed main roads (including bridges, etc.) are under the control of the Administrator. A Road Commission is set up under the Ordinance and powers and duties are assigned to it. Provisions are inserted in the Ordinance for closing and diverting public roads.

## 5. TRANSVAAL.

[Contributed by R. ESCOMBE WILLCOCKS, ESQ.]

Ordinances passed—9.

**Roads (No. 5).**—The Roads Ordinance repeals No. 7 of 1889, Nos. 1 and 9 of 1893, No. 8 of 1897, and No. 6 of 1911,<sup>1</sup> and Art. 55 of the first Volkraad Resolution of May 14, 1891, and Art. 304 of Law No. 22 of 1894. Nothing in this Ordinance is to be construed as repealing, amending, or otherwise modifying or affecting the Precious and Base Metals Act, 1908.<sup>2</sup>

<sup>1</sup> See Journal, vol. xiii. p. 405.

<sup>2</sup> See Journal, vol. x. p. 378.

The Ordinance classifies public roads as: (a) Main Roads; (b) Branch Roads; (c) Bridle Paths (s. 3).

The maintenance of public and main roads and of bridges and drifts is provided for, and all public roads are vested in the Administrator, who has powers to open, close, or divert roads and regulate traffic (see ss. 5, 6, 7). District Road Boards are to be constituted for at least every magisterial district.

**Rates** (No. 6).—The Local Authorities Rating Ordinance consolidates and amends the law relating to the levying of rates by local authorities.

**Municipal Elections** (No. 8).—The Municipal Elections Ordinance consolidates and amends the law relating to the election of members of town councils.

**Local Government** (No. 9).—The Local Government Ordinance sets up a complete system of local government. Town councils are constituted in certain existing municipalities, and provision is made for the election of mayors and deputy mayors.

Comprehensive rules for the conduct of councillors are laid down, and councillors are prohibited from acting for or against their council in professional capacities for rewards. Provisions are also made as to councillors being interested in contracts with the council.

The financial aspect of local government is fully provided for.

The Ordinance also deals with the general powers of the council, such as the appointment of town clerk, the control of streets, etc., powers to purchase land and to enter into contracts, to construct and maintain roads, canals, reservoirs, etc.

Power is also given to councils to make by-laws (s. 72). By virtue of this Ordinance, Health Committees are to be set up.

## 6. SOUTHERN RHODESIA.

[*Contributed by R. ESCOMBE WILLCOCKS, ESQ.*]

Ordinances passed—15.

**Copyright.**—By virtue of a Proclamation of August 16, 1912, by the High Commissioner, the Imperial Copyright Act, 1911,<sup>1</sup> is declared to be in operation in Southern Rhodesia.

**White Phosphorus** (No. 1).—The manufacture, importation, or sale of matches containing white phosphorus is prohibited by the White Phosphorus Matches Ordinance.

**Liquor** (No. 2).—Notwithstanding s. 12 of the Sale of Liquor to Natives and Indian Regulations, 1898, the Importation of Liquor Ordinance allows persons authorised under any licence (except auctioneer and beer-hall licences) to sell intoxicating liquors without the permission of a magistrate.

<sup>1</sup> 1 & 2 George V. c. 46.

**Crime (No. 4).**—In order to prevent crime and to enable the police to identify criminals, the Prisoners' Identification Ordinance empowers persons having the care of prisoners charged with any crime and temporarily detained in any gaol, lock-up, etc., to take impressions of all the digits of both hands.

**Cinematographs (No. 5).**—The Cinematograph Ordinance regulates cinematograph exhibitions.

**Compensation (No. 6).**—The Native Labourers' (Mines) Compensation Ordinance provides that every person carrying on mining operations shall pay compensation to native labourers injured by an accident arising out of or in the course of their employment, and in cases where a native labourer is killed compensation is to be paid to any persons dependent upon him. The scale of compensation is regulated by the Ordinance, and a Board is appointed to settle disputes.

**Schools (No. 7)**—The Native Schools Act is an Ordinance to provide a proper control of native schools, and managers of native schools are required to furnish information to the Director of Education. The permission of the Director of Education must be obtained before a native school can be opened.

**Dogs (No. 8).**—The Dog Tax Ordinance imposes a tax of 5s. on the owner of a dog over the age of six months.

**Credit to Natives (No. 9).**—The Box System Ordinance was passed to provide for supervision of a system of credit to natives called the Box System. By this is meant the practice of general dealers to keep boxes or other receptacles into which the natives can deposit their goods for safe keeping or as security for the payment of amounts due for goods supplied by the dealer to the natives upon credit. By the provisions of this Ordinance "box-keepers" must be registered and the box-keeper must also keep a register of all natives whose goods he holds.

**Agriculture (No. 10).**—The Fruit and Vegetables (Urban Areas) Ordinance gives powers to the local authority to adopt the regulations made by the Administrator regulating the sale of fruit in urban areas and for the regulation of orchards and vegetable gardens.

**Juries (No. 13).**—It is provided by the Special Juries Ordinance that in cases of grave crime, either when the accused person or the victim or *vice versa* is an European, the jury shall be composed of five men, called a "Special Jury," and not less than four must concur for a verdict.

**Voters (No. 14).**—This Ordinance—the Voters' Qualification and Registration Amendment Ordinance—provides that a male of twenty-one years being a British subject, who has resided in the Colony and (a) has occupied for six months a house, warehouse, shop, etc., of the value of £150, or whose share of joint occupation is not less than £150; (b) has been the owner of mining claims situate in the electoral district; or (c) in receipt of a salary of not less than £100 per annum, is qualified to be a voter.

Persons who cannot read or write are disqualified and also criminals (under certain conditions) and lunatics.

**Marriage** (No. 15).—Any person who promises or pledges a native woman in respect of her marriage for valuable consideration is liable to punishment by the provisions of the Native Marriages Ordinance.

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## VI. WEST AFRICA.

[Contributed by J. D. CASSWELL, ESQ.]

### 1. GAMBIA.

Ordinances passed—14.

**Cinematograph Exhibitions.**—No. 1 establishes a censorship of cinematograph films and, to protect the public against danger from fire, orders that every exhibition be carried on under the supervision of a person or officer designated by the Governor.

**Public Health.**—No. 4 is a comprehensive Ordinance dealing with the subject of public health generally and restricted to the Island of St. Mary. It provides for the establishment of a Board of Health composed of the Senior Medical Officer, the Colonial Engineer, and the Superintendent of Police, *ex officio*, and six other members to be appointed by the Governor. The local rates are placed at the disposal of the Board. The matters covered by the Ordinance include the abatement of nuisances and the destruction of mosquitoes, and also regulations dealing with ships in the river, privies, lands and streets, water, the market, bakehouses, slaughter-houses, unsound food, the notification of disease and burial, and the registration of deaths.

**Distillation of Spirits** (Nos. 6 and 7).—Distilling for drinking purposes is made illegal, and the importation of distilling apparatus and machinery is restricted.

**Post Office** (No. 8).—This Ordinance deals with the establishment and regulation of the Postal Department and repeals previous Post Office Ordinances. The rates of transmission of postal matter, the issue and sale of stamps, etc., are left for the determination of the Governor. Other matters dealt with at some length are the duties of masters of mail-carrying vessels, offences, penalties, etc., legal procedure, and the protection of officers.

**Rating** (No. 9).—A Committee is established to prepare the rating list. The procedure is a modified form of that in force in England. The rate is fixed at 5 per cent. per annum on every lot or portion of a lot of the annual value of not less than £5.

## 2. GOLD COAST.

## (i) THE COLONY.

Ordinances passed—22.

**Destructive Pests (No. 2).**—The Governor is empowered to make orders to prevent the landing of trees and other vegetable substances likely to introduce insects, fungus, or other pests into the Colony, and also for the destruction of such pests where they are found to exist.

**Cinematograph Exhibitions.**—No. 6 is an Ordinance similar to that passed in Gambia.<sup>1</sup>

**Registration of Births and Deaths (No. 3).**—This Ordinance deals with the registration of births, deaths, and burials, and the regulation of cemeteries. Provision is made for the appointment of a Registrar and Deputy Registrars, with power to collect information and to issue a yearly summary and report. They are further empowered to grant burial permits and to refuse to issue them in suspected cases. Numerous regulations deal with the institution and upkeep of cemeteries.

**Illiterates (No. 4).**—The Illiterates' Protection Ordinance makes it an offence to write a letter or document for an illiterate person without first complying with certain regulations framed to ensure that the illiterate person is fully aware of the nature of the document. Further, if the writer receives payment for his work he must obtain a licence and his charges must be in accordance with a rate fixed for the purpose.

**Doctors and Dentists.**—No. 7 provides for the registration of doctors and dentists, and prescribes the qualifications necessary for registration in the Colony and the privileges associated therewith.

**Registration of Passengers (No. 8).**—An Ordinance, known as the European and Asiatic Passengers Ordinance, 1912, provides for the registration of arrivals and departures of Europeans and Asiatics. It enacts that a return of passengers giving such particulars as the Governor may order must in future be made by the masters of all vessels carrying passengers to or from the Colony.

**Distillation of Spirits (No. 12).**—This Ordinance prohibits the distillation of spirits in the Colony, except the distillation of alcohol for purely commercial, industrial, and scientific purposes.

## (ii) NORTHERN TERRITORIES.

Ordinances passed—2.

**Constabulary (No. 1).**—The Northern Territories Constabulary Ordinance is amended by the addition of a clause empowering the Secretary of State to confer medals for distinguished conduct in the field.

<sup>1</sup> *Supra*, p. 185.

**Administration (No. 2).**—The Northern Territories Administration Ordinance, 1902, is amended by the following Ordinances being made applicable to the Northern Territories: The Marriage Ordinance, 1884; the Infectious Diseases Ordinance, 1908; and the Distillation of Spirits Prohibition Ordinance, 1912.

(iii) ASHANTI.

Ordinances passed—6.

**The Ashanti Concessions Ordinance, 1903**, has been amended by No. 5, which enacts that concession holders assessed to pay income tax in the United Kingdom shall pay income tax according to that assessment, and concession-holders who are not liable to income tax in the United Kingdom shall be assessed as if they were so liable.

**Ashanti Administration.**—No. 6 amends the Administration Ordinance of 1902 by making applicable to Ashanti the following additional Ordinances of the Gold Coast Colony: the Druggists Ordinance, 1892; the Cinematograph Ordinance, 1912; and the Distillation of Spirits Ordinance, 1912.

3. SIERRA LEONE.

Ordinances passed—27.

**Cinematograph Exhibitions; Destruction of Pests.**—The Ordinances dealing with these subjects are similar to those passed in Gambia and the Gold Coast Colony respectively.<sup>1</sup>

**Nurses' Pensions (No. 3).**—The provisions of this Ordinance entitle European nurses to retire with a pension on the completion of a period of service equal to two-thirds of that prescribed in the case of other public officers.

**Public Health.**—An amending Ordinance (No. 5) provides that every well or vessel intended for the storage of water must be fitted with a cover to prevent the ingress of mosquitoes. This Ordinance also amends the definition of "occupier" contained in the principal Ordinance of 1905.

**Process Extension.**—No. 7 is an amending Ordinance relating to the service of summonses outside the jurisdiction and providing that this may be effected in all the cases set out in Order XI., Rule 1, of the S.C.R. in England, and also in probate actions when desirable.

**Forestry.**—No. 8 is an Ordinance to regulate the creation of forest reserves and the taking, collection, and sale of timber, rubber, and forest produce. An officer, known as the Reserve Settlement Commissioner, is to be appointed whenever it is thought desirable to set aside lands as a forest reserve. He is to hold an inquiry with the object of defining the limits of the reserve and of deciding any claims which arise with respect to it. An appeal lies

<sup>1</sup> *Supra*, pp. 185, 186.

from his decision to the Supreme Court. In default of such an appeal being made, or upon the decision of such an appeal, an order will issue from the Governor constituting the lands in question a forest reserve and all private rights over them will be thereby extinguished if not already acquired by the Crown. The Governor is further empowered to constitute as "restricted areas" any Crown lands in the Colony, or, at the request of a tribal authority, any lands in the Protectorate. In these areas the taking and collection of timber, rubber, and forest produce will be permitted only under rules made by the Governor in Council. Among the matters which may be dealt with by rules made by the Governor in Council are the management of forest reserves and restricted areas, the granting of licences, the fees to be paid for licences and the royalties and tolls to be charged. Two kinds of licences are mentioned, viz.:

- (a) to take and collect timber, rubber, and forest produce, and
- (b) to sell, purchase, and export the same.

Part I. of the schedule attached to the Ordinance prescribes rules relating to rubber and gum-copal in restricted areas. The granting of licences, the method of tapping, the establishment of nurseries, and the distribution of royalties are among the matters regulated by these rules. Part II. is an order setting forth the acts prohibited in restricted areas under the Ordinance. Part III. consists of rules relating to timber in restricted areas. They regulate, among other things, the granting of licences, the delimitation of lands, the marking of trees and stumps, the general powers of a licence-holder, and the replanting of trees. Part IV. consists of the order and rules relating to forest reserves.

**Trade Spirits.**—No. 9 regulates the size, capacity, weight, and method of packing of vessels in which trade spirits may be imported, and the assessment of duty in respect of the various sizes. It is to be construed as one with the Sierra Leone Customs Consolidation Ordinance of 1902.

**Lotteries** (No. 10).—The advertising of lotteries is prohibited.

**Distillation of Spirits** (No. 11).—This Ordinance makes it illegal to distil or sell, or offer for sale, any spirits distilled in the Colony or Protectorate other than spirits distilled, with the sanction of the Governor, for industrial, medical, or scientific purposes.

**Sanitary Department.**—In addition to numerous minor amendments, No. 13 amends the Public Health Ordinance of 1905 by establishing a Sanitary Department and transferring to it certain powers exercised under the principal Ordinance by the City Council of Freetown.

**Supreme Court.**—No. 14 repeals s. 61 of the Supreme Court Ordinance, 1904, and substitutes for it several sections dealing in detail with the constitution of the Supreme Court and the Court of Appeal.

*The Supreme Court* is now composed of the Chief Justice and one or more puisne judges, who may be appointed by the Governor by patent upon instructions from his Majesty, and also of the Chief Justice and every judge



of the Supreme Court of the Gold Coast Colony, who will be puisne judges of the Supreme Court.

*The Court of Appeal* is the Full Court constituted for the purpose by three or more judges, of whom the Chief Justice must be one. The Chief Justice, with the approval of the Governor, may also summon two or more puisne judges to attend at appeal sittings.

An appeal will lie to the Full Court from all judgments and decisions of the Supreme Court or the Circuit Court when the claim is above the value of £50. The procedure on appeal is set out in full in a schedule attached to the Ordinance.

**Unlawful Societies.**—In consequence of frequent murders committed under the influence of unlawful societies in the Colony and Protectorate, two Ordinances have been passed (Nos. 17 and 18). By the first of these, the Human Leopard and Alligator Societies Amendment Ordinance, 1912, the Governor has power to proclaim any chieftdom in which such a murder appears to have been committed. In a proclaimed district the District Commissioner may arrest and detain any person whose arrest or detention he thinks desirable in the interests of justice. This Ordinance further makes it an offence punishable by imprisonment, with or without hard labour, for any term up to fourteen years, to be a member of an unlawful society, or to take or have taken part in any operation or meeting of such a society. In the case of persons, other than aliens, convicted of complicity in a murder in connection with an unlawful society, power is given to the Governor in Council to deport such persons to any other British Colony, there to be imprisoned for such a term as the Governor of that Colony may direct. When a convicted person is an alien, the Governor in Council may make an order expelling him from the Colony after he has served the term of his imprisonment.

By the second Ordinance, a Special Commission Court is constituted to deal with this class of crime, with power to inflict sentence of death, and to report convicted persons for deportation and expulsion in accordance with the provisions of the first Act. Another very important power conferred on the Special Commission Court is that of reporting to the Governor a person who has been acquitted, if, in the opinion of the Court, his expulsion is expedient for the security, peace, or order of the district, and thereupon the Governor may order his expulsion from the district.

#### 4. NORTHERN NIGERIA.

Proclamations passed—10.

**Nurses' Pensions** (No. 3).—This Proclamation is substantially the same as the Ordinance passed in Sierra Leone.<sup>1</sup>

**Cinematograph Exhibitions** (No. 4).—A Proclamation similar in all material respects to the Ordinance passed in Gambia.<sup>2</sup>

<sup>1</sup> *Supra*, p. 187.

<sup>2</sup> *Supra*, p. 185.

**Explosives.**—No. 5, the Explosives Proclamation, 1912, makes it illegal to land, import, or sell explosives without a permit from the Governor.

**Employment of Women** (No. 8).—This relates to the employment of women in “industrial undertakings,” a term which is made to include any undertaking in which articles are manufactured or materials transformed. The effect of the Proclamation is to prohibit night work for women between the hours of 10 p.m. and 5 a.m. Undertakings where only ten in all, men and women, are employed, or where the employees are the family of the proprietor, are expressly excepted.

**Railways.**—No. 9 amends s. 7 of the Railway Proclamation of 1910 dealing with the by-law-making powers of the Director of Railways and Works.

## 5. SOUTHERN NIGERIA.

Ordinances passed—34.

**Collective Punishment** (No. 6).—The expedient of punishing collectively all or any of the inhabitants of a village or district or of the members of a tribe or community is legalised by the Collective Punishment Ordinance, 1912. The Governor may resort to this form of punishment by imposing fines in all cases where, after an inquiry, he finds that the inhabitants or members are guilty of the following offences: (a) harbouring criminals or aiding their escape; (b) suppressing evidence in criminal cases; (c) neglecting to restore stolen property; (d) refusing to obey the lawful orders of the Provincial or District Commissioner; and (e) being guilty of conduct which has entailed the intervention of soldiers or the police.

The inhabitants of a village or district where a homicide or attempted homicide has taken place are punishable in the same way, unless they can prove (a) that they had no opportunity of preventing the offence or arresting the offender; or (b) that they have used all reasonable means to bring the offender to justice.

The payment of these fines can be enforced by distress levied upon the lands of all or any of the persons upon whom the fines have been imposed.

**Lotteries** (No. 7).—The advertising of lotteries is prohibited.

**Companies** (No. 8).—By far the longest Ordinance passed during the year was the Companies Ordinance. In effect, however, this is merely an adoption by Southern Nigeria, *mutatis mutandis*, of the Companies (Consolidation) Act, 1908, of the United Kingdom. Since the only alterations of importance consist of those rendered necessary by the difference in the tribunals, it is unnecessary to give a detailed account of this Ordinance.

**Nurses' Pensions** (No. 12).—This Ordinance contains the same provisions as that passed in Sierra Leone.<sup>1</sup>

**Peace Preservation** (No. 14).—This is described as “an Ordinance to

<sup>1</sup> *Supra*, p. 187.

provide for the better preservation of the public peace in those parts of the Protectorate which are not under absolute control." Under its provisions the Governor, or in case of emergency the Provincial Commissioner, is empowered to declare by proclamation that any part of the Protectorate is a "disturbed district." Thereupon persons in that district suspected of being guilty of treason or crime punishable by law or of inciting to acts tending to disturb the maintenance of law and order, may be arrested on warrant and detained without trial. At the expiration of every period of three months after the arrest the Governor must reconsider the case of the suspect and decide thereon. Save as authorised by the proclamation no person will be allowed to carry arms in a disturbed district. Further, a fine not exceeding £500 may be imposed upon a chief or any person in a disturbed district who has taken part in or instigated any rebellion or riot, or has been negligent in suppressing it or in bringing the guilty persons to justice. The imposition of this fine will not exempt the offender from any proceedings, either criminal or civil, to which he has rendered himself liable. In cases where additional troops or police have been drafted into a disturbed district the additional cost incurred may be recovered by means of a fine on the inhabitants.

**Unsettled Districts (No. 15).**—The Governor in Council may from time to time declare any portion of the Protectorate an "unsettled district." He is then empowered to prevent non-natives from entering the district, and a Provincial Commissioner or District Commissioner has the same power, subject to an appeal to the Governor. Any prohibited person who is suspected of intending to enter the district may be ordered by the Commission Court to give security not to commit a breach of these provisions, and in default may be deported; any prohibited person who enters or attempts to enter the district is liable to imprisonment or a fine, or both.

**Survey (No. 17).**—The Survey Ordinance has been slightly amended by the addition of provisions framed to protect survey marks from interference, and a schedule has been added describing the marks used by the Government Survey Department.

**Pawnbrokers (No. 18).**—The Pawnbrokers Ordinance adopts for the Colony the Pawnbrokers Act, 1872, of the United Kingdom. The Ordinance differs from the Act, however, by being applicable to all loans up to £20, whereas the Act applies only to loans up to £10. Moreover, under the Act a pawnbroker is permitted to enter into a special contract in respect of loans of over £2, but in the Ordinance this provision is omitted.

**Liquor (Prohibited Areas) (No. 19).**—This Ordinance provides for the declaration of prohibited areas into which it will be unlawful to import spirituous liquors except for their own use by persons holding special permits from the Governor. It is an offence for a native to be found in possession of spirituous liquors in a prohibited area and, where a non-native is found in possession of them without a permit, he will have to prove that he has not

illegally imported them. The sale of such liquors in a prohibited area is forbidden except by licence from the Governor.

**Money-lenders (No. 20).**—The Money-lenders Ordinance enacts for the Colony the Money-lenders Act, 1900, of the United Kingdom. This provides for the reopening of harsh and unconscionable transactions, the obligation of every money-lender to register himself under his usual trade name and carry on his business under that name, and further makes it an offence to induce borrowing by means of false statements. Into this Act the Ordinance imports ss. 2, 4 and 5 of the Betting and Loans (Infants) Act, 1892, which makes it a misdemeanour to send circulars or other documents to infants, with knowledge that they are infants, inviting them to borrow money.

**Harbour Regulation (No. 25).**—This amends the Harbour Regulation Ordinance of 1908 by providing that within the limits of any harbours to which the Ordinance shall be made applicable no steam whistle or signal shall be sounded by any ship at anchor or moored to a quay or wharf.

**Theatres (No. 26).**—The licensing of stage plays and a censorship of cinematograph exhibitions are provided for by the Theatres and Public Performances Regulation Ordinance, 1912.

**Buildings Regulation (No. 29).**—In the case of all roads which have not been declared roads under the Roads and Creeks Ordinance, the fixing of the building line and of the space to be left on each side of the roads is placed in the hands of the Governor in Council. No line so prescribed must be at a greater distance than 30 ft. from the centre of the road. In all roads provided for by the Roads and Creeks Ordinance 30 ft. from the centre of the road is the minimum line prescribed for building or rebuilding houses. This is provided for by the Buildings Regulation Ordinance, 1912, which also provides for the pulling down or removal of buildings which contravene this Ordinance at the expense of the person who executed the works or the person who caused them to be executed. Compensation is payable out of the general revenue of the Colony to the owner or any person immediately interested in any building set back or forward.

The Building Lines Ordinance, 1911, is repealed.

**Distillation of Spirits (No. 30).**—The distillation of spirits in the Colony is prohibited, except the distillation of alcohol for purely commercial, industrial, medical, or scientific purposes with the sanction of the Governor in Council.

**Wireless Telegraphy.**—The Wireless Telegraphy Ordinance is amended by the substitution of a section (Ordinance No. 33) empowering the Governor in Council to make orders for the granting of licences and regulations governing the use of wireless apparatus on all merchant ships while in the territorial waters of the Colony and Protectorate.

## VII. EAST CENTRAL AFRICA.

## I. EAST AFRICA PROTECTORATE.

[*Contributed by R. ESCOMBE WILLCOCKS, ESQ.*]

Ordinances passed—29.

**Forestry** (No. 2).—The Forest Amendment Ordinance amends the Forest Ordinance, 1911.<sup>1</sup> "Timber" is defined in this Ordinance as "including any tree which has been felled or fallen, and any part of a tree which has been cut off or fallen, and all wood whether sawn, split, hewn, or otherwise fashioned." The Ordinance introduces a few amendments.

**Mining** (No. 6).—This Ordinance defines amongst other terms "coal" as including "all descriptions of coal, lignite, and carbonaceous shale"; "minerals" as "including metals other than gold, but does not include precious stones, coal, oil, or any such clays, sand, or stone as the Commissioners of Mines shall declare to be suitable only for road-making, building, making of pottery and similar purposes, and from which no other mineral of such quality or in such quantity as to be of commercial value can be obtained."

The Ordinance sets up a Commissioner and Department of Mines; very considerable powers are vested in the Commissioner.

Special provisions are made for the acquisition of rights of prospecting, mining, and occupation. In time of war the Government reserves to itself the right for its inspectors to visit mines at all times.

**Plays and Cinematographs** (No. 8).—The Stage Plays and Cinematograph Exhibitions Ordinance provides for licences for theatre and cinematograph performances whether the public are admitted gratuitously or not. A copy of every stage play must be submitted to the licensing officer, and if any such play is in a language unknown to the licensing officer, it must be translated into English. A description of every scene intended to be presented at any cinematograph exhibition shall be submitted to the licensing officer. An appeal from the licensing officer lies to the Governor.

**Vaccination** (No. 12).—By a Vaccination Ordinance the Governor is empowered for the purpose of preventing small-pox to make vaccination compulsory in certain districts. In these districts all unvaccinated persons must be vaccinated, and also all persons who have been unsuccessfully vaccinated must be revaccinated. However, if the Governor is satisfied that vaccination is prohibited by the religion of any persons who are otherwise compelled to be vaccinated, he may, by writing, exempt such persons from the operation of the Ordinance.

<sup>1</sup> See Journal, vol. xii p. 414.

**King's African Rifles** (No. 15).—This Ordinance, the King's African Rifles Ordinance, 1912, deals with the setting up and constitution of the King's Regiment of the King's African Rifles for the defence of the Protectorate.

**Weights and Measures** (No. 16).—The East Africa Weights and Measures Ordinance, 1912, standardises the weights and measures of the Protectorate by adopting the British standards of weights and measures as defined in the Imperial Weights and Measures Act, 1878. The table provided by the Imperial Weights and Measures (Metric System) Act, 1897, s. 2 (2), is to be used for computing and expressing the British weights and measures in terms of the Metric System. This Ordinance does not recognise the local or customary or heaped-up measure.

**Trade Marks** (No. 17).—The Registration of Trade Marks Ordinance sets up machinery for the registration of trade marks.

**Official Secrets** (No. 20).—The Official Secrets Ordinance follows the same lines as the Official Secrets Act, 1911, of the United Kingdom.

**Sales by Auction** (No. 25).—The Sales by Auction Ordinance regulates the licensing of auctioneers. A duly licensed auctioneer must accept the sale of all property offered by owners, but he is not bound to sell it until after he has held it for seven days. The auctioneer's licence does not permit him to sell spirits.

## 2. UGANDA PROTECTORATE.

[*Contributed by* EDWARD MANSON, ESQ.]

### Ordinances passed—24.

**Witchcraft** (No. 6).—This Ordinance prevents witch-finders and witch-doctors from exercising their supposed powers and suppresses witchcraft in all forms.

**Official Secrets** (No. 7).—The Official Secrets Ordinance follows the Official Secrets Act, 1911, of the United Kingdom.

**Plays and Cinematographs** (No. 8).—The Stage Plays and Cinematographs Ordinance regulates the licensing of plays and cinematograph exhibitions and also provides for the safety of persons in theatres.

**King's African Rifles** (Nos. 9 and 10).—The King's African Rifles Reserve Force Ordinances regulate that portion of his Majesty's Army known as the King's African Rifles. They provide for discipline, recruiting, etc., and also of the Reserve of the Force.

**Patents, Designs, and Trade Marks** (No. 12).—A registry for these is created with the necessary procedure.

**Plant Pests** (No. 13).—A Plant Pests Board is to be established, and any pest is to be reported forthwith to the chairman. Thereupon the Board may require the owner or occupier of any land affected to take measures for the eradication of such pest. Compensation, though not of right, may be

awarded by the Governor. "Pest" means such insects, parasitic plants, or fungi as the Governor shall from time to time declare.

**Roads and Carriages** (No. 16).—This Ordinance provides for the licensing of carriages—that is, wheeled vehicles of all sorts—and regulates wheels, weight, brakes, etc., for the purposes of road traffic.

**Licensing** (No. 23).—By the Licensing Ordinance every person trading in the Protectorate (except a native trading solely on his own account or on behalf of another native) shall take out a licence and pay an annual licence fee at prescribed rates.

Persons engaged as planters, market gardeners, or dairymen disposing of the produce of their own estates, or persons buying local produce for export, or brokers, pawnbrokers, money-changers, gold or silver smiths licensed under the Pawnbrokers Regulation, 1902, do not need licences in respect merely of those occupations. The Governor may by Proclamation exempt persons engaged in other occupations from the payment of licences. The Governor may prohibit trades in certain districts except to persons holding a special licence.

#### OTHER ORDINANCES RELATE TO—

Customs (No. 11). Railways (No. 14). Weights and Measures (No. 7). Civil Procedure by or against Government or Public Officers (No. 18). Equitable Mortgages (No. 19). Crown Lands (No. 21). Liquor Licences (No. 23).

### 3. SOMALILAND PROTECTORATE

[Contributed by R. ESCOMBE WILLCOCKS, ESQ.]

#### Ordinances passed—6.

**Game** (No. 1).—The Game Preservation Amendment Ordinance is to be read with the Game Preservation Ordinance, 1907.<sup>1</sup> A special class of Game Licence—viz. the Public Officers' Licence—is provided for by this Ordinance.

**Cinematographs** (No. 2).—The Cinematographs Ordinance regulates cinematograph performances and provides that no performances shall be given unless the Commissioner's permit has been obtained; this permit may be revoked at any time (s. 3).

**Municipal Funds** (No. 3).—The Municipal Funds Ordinance creates a fund for the Berbera Municipal Council appointed under the Townships Ordinance, 1911.<sup>2</sup> It is provided that all fee tolls, etc., levied at Berbera under heads 2 and 10 of the schedule to the Fees and Royalties Ordinance, 1907, shall be paid into the Fund.

**Registration of Documents** (No. 5).—In exercise of the powers conferred by Art. 3 of the Somaliland Order-in-Council, 1906, the order of the Secretary

<sup>1</sup> See Journal, vol. viii. p. 485.

<sup>2</sup> See Journal, vol. xiii. p. 416.

of State made on May 10, 1900, is repealed, in so far as it applies to the Protectorate the provisions of the Indian Registration Act, 1877, and amending Acts. The Registration of Documents Ordinance sets up a system of registration for the Protectorate and provides for Registrars.

The Ordinance requires that all documents (executed after the commencement of the Ordinance) purporting to grant or transfer land or immovable property or any interest therein (other than testamentary documents) or to lease land for a longer term than one year must be registered in the district where the land is situated.

#### 4. NYASALAND PROTECTORATE.

[Contributed by EDWARD MANSON, ESQ.]

Ordinances passed—20.

**Native Foodstuffs** (No. 2).—On any threatened shortage of these the Governor in Council may prohibit the purchase or barter of such foodstuffs in the district for re-sale out of the district. "Native foodstuffs" includes every article used by the natives for food or drink other than drugs or water. It comprehends flavouring matter and condiments.

**Stage Plays and Cinematographs** (No. 3).—A licence must be obtained for the advertisement or performance of these. For this purpose a copy of every stage-play and a description of every scene in every cinematograph exhibition must be submitted to the licensing officer.

Any cinematograph, mutoscope, or similar apparatus which, in the opinion of the licensing officer, is objectionable from a moral or political point of view may be impounded.

**Townships** (No. 4).—The Governor in Council may proclaim any settlement or place to be a "township," and thereupon the scheme of government by an elected council provided by the Ordinance for such townships shall come into operation.

**Dogs** (No. 5).—Every owner of a dog is to take out a licence annually, and provide the dog with a collar with the owner's name and address. Dangerous dogs may be ordered to be kept under proper control, or to be destroyed.

**Supply**.—Nos. 16 and 17.

**Judgments Extension** (No. 7).—This Ordinance makes provision for the enforcement in the Protectorate of judgments for debt, damages, or costs obtained in the High Courts of East Africa, Uganda, Northern Rhodesia, Zanzibar.

**Land Surveyors** (No. 8).—Persons applying to be commissioned as land surveyors must be examined, and if found proficient registered by the Director of Public Works. No survey unless made by a surveyor so registered is to be recognised by any Court or by the Registrar of Deeds.



**Stamps** (No. 9).—This Ordinance, with a schedule annexed, fixes the stamp duties to be charged for the use of the Government of the Protectorate.

**Purchase of Cattle from Natives** (No. 10).—A permit for this from a District Resident is required, and the cattle passed, if required, before the District Resident.

**Departmental Offences** (No. 11).—This Ordinance deals with offences by subordinate officers, clerks, mechanics, artisans, or servants in the employment of the Government.

**Natives**—No. 13 enables the Governor in Council to make rules for the government of the native population of any district or area proclaimed under the Ordinance.

**Native Hut Tax** (No. 14).—The native with more than one wife seems to have been under the impression that he might avoid the tax for two by having them both living in one hut instead of in separate huts. The Ordinance dispels any such hope.

**Christian Native Marriages** (No. 15).—The provisions of the British Central Africa Marriage Ordinance, 1902, are to apply to marriages under the Ordinance. Such marriages must be solemnised by a minister and in licensed buildings.

**Plant Protection** (No. 16).—This is one of a now numerous set of Ordinances in the Empire for the prevention of infection to plants. It authorises the Governor in Council to prohibit by Proclamation the importation directly or indirectly from any country or place named in the Proclamation of any plant or any earth or soil or any article packed therewith which may be a means of introducing any plant disease into the Protectorate. No plants are to be imported without compliance with certain conditions for inspection, and disinfecting if necessary.

**Drugs** (No. 20).—Only a licensed person may sell drugs, and the written authority of a medical practitioner is required for the sale of any of the articles scheduled to the Ordinance.

#### AMENDING ORDINANCE.

Game Licences (No. 1).

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## VIII. SOUTH ATLANTIC.

[Contributed by EDWARD MANSON, ESQ.]

### 1. THE FALKLAND ISLANDS.

Ordinances passed—11.

**Customs** (No. 1).—The export duty on whale oil is fixed at 3*d.* per barrel of 40 gallons.

**Supply** (Nos. 2, 6 and 11).—These provide for the public service of the year.

**Wireless Telegraph** (No. 3).—A licence must be obtained from the Governor-in-Council to establish or work any wireless telegraph station in the Colony.

**Cinematograph Shows** (No. 4).—A similar Ordinance to that noted in the review of St. Helena legislation.<sup>1</sup> No one is to present or advertise a cinematograph exhibition unless a description of every scene to be produced has been furnished to the Colonial Secretary and a written permit obtained.

This Ordinance adds a provision that where a permit is given on condition that the exhibition be conducted under the superintendence of some person designated, the person so designated may at any time order the exhibition to cease or give any other direction he may think fit for securing safety from fire.

The occupier or manager of the premises must ascertain whether the proper permit has been obtained.

**Whale Fishery** (No. 5).—This amends the principal Ordinance by providing for the grant of licences for floating factories where whale carcasses may be boiled down or otherwise treated.

**Intoxicating Liquors** (No. 7).—The “black list” system exists in the Colony. Any person so prohibited who (a) sends or in any way influences any person to procure him liquor; or (b) is found in possession of any liquor; or (c) is found drunk in Stanley, is to be liable to a fine not exceeding £5, or to imprisonment not exceeding one month. Any person supplying liquor to a “prohibited person” is to be liable on a second conviction to imprisonment for six months.

**Wild Animals and Birds** (No. 8).—The killing or trapping of the reindeer and upland goose is absolutely prohibited in South Georgia, and a close time from October 1 to February 28 is provided for duck, teal, widgeon, and giant petrel.

**Registration of Deaths** (No. 9).—Printed forms of certificate of the cause of death are to be furnished by the Registrar-General to medical practitioners, who are in case of the death of any person attended by them to fill in the certificate with the cause of death, and deliver such certificate to the Registrar for entry of the Register.

In case of an inquest the certificate of the finding of the jury is to be sufficient.

**Death Sentences on Children** (No. 10).—Sentence of death is not to be pronounced on any child or young person; but in lieu thereof sentence of detainer during his Majesty's pleasure is to be passed. This Ordinance brings the Colony into line with the legislation on this subject in nearly all parts of the Empire.

<sup>1</sup> See *infra*, p. 199.

## ST. HELENA.

## Ordinances passed—6.

**Cinematographs** (No. 1).—The cinematograph is now adding everywhere to the burdens of the legislator. Under this Ordinance no cinematograph display is to be presented or advertised unless a description of every scene is furnished to the Governor and his written permit first obtained. Penalty £50. This Ordinance does not apply to a private exhibition though money is taken.

**Sale of Bread** (Nos. 2 and 5).—All bread is hereafter to be sold by weight on peril of a penalty of 40s. for every offence against the Ordinance. An exception is made in favour of French or fancy bread or rolls. The standard household loaf is always to weigh 1 lb. 8 oz. avoirdupois. Every seller of bread must keep scales in his shop, and every baker's cart carry scales to weigh bread in the presence of the buyer. Any adulteration of bread is visited with a penalty of £10.

A complaint under the Ordinances must be made within forty-eight hours after the offence.

**Supply** (Nos. 3 and 6).—These provide for the public service of the year.

**Whale Fishery** (No. 4).—No person may take whales or "manufacture whale carcasses" without a licence for that purpose from the Governor, who is authorised to make regulations on the subject. There is a reservation in case of whales taken for scientific or special purposes with the sanction of the Governor.

Derelict whales cast ashore may be taken possession of by the owner of the land, but subject to any royalty or conditions prescribed by the Governor in Council.

## IX. NORTH AMERICAN COLONIES.

## I. THE DOMINION OF CANADA.

[*Contributed by* J. G. ARCHIBALD, ESQ.]

Acts passed—Public, 57 ; Private, 113.

The legislation of the Dominion for the year 1912 covers a wide field, but while valuable and important from a political point of view, it contains only a limited number of statutes which call for notice in this Journal.

**Agriculture.**—The Canada Grain Act (No. 27) elaborates and extends the provisions applicable to the storage, transport, grading, and sale of grain. A Board of Grain Commissioners—who are permanent officials—assisted

by a staff of inspectors and other officers are entrusted with the execution of the Act.

Any owner of grain is entitled to have his grain inspected and officially graded as of a certain quality. From the decision of the inspector an appeal may be taken to the chief inspector, and from him to a grain survey board. The various gradings are extremely elaborate, and official standard samples of each will be kept and will be available to the public.

The Act also regulates the terms upon which terminal elevators—which require to be licensed—may be operated by private persons. Care is taken to prevent any form of oppression or undue discrimination, and the Board may, in a proper case, revoke the licence.

A noticeable feature of the Act is the power given to the Board themselves to construct and operate public elevators<sup>1</sup>

**Public Records.**—The Public Archives Act (No. 4) provides for the appointment of a Dominion Archivist, who shall have the custody of all public records, documents, and other historical material with which he may be entrusted by Act of Parliament or Order-in-Council.

**Banks.**—The Bank Charters Continuation Act, 1912 (No. 5), extends by two months the period—from September 1 to March 1—during which the banks are permitted to expand their note circulation for the purpose of moving the crops.

**Biological Investigation.**—The Biological Board Act (No. 6) creates a Biological Board which will have control of all biological stations in Canada, and will conduct investigations, under the Ministry of Marine and Fisheries, into practical and economic problems connected with marine and fresh-water fisheries and flora and fauna.

**Boundaries of Provinces.**—Nos. 32, 40 and 45 respectively extend the boundaries of the provinces of Manitoba, Ontario, and Quebec to take in new territory towards Hudson's Bay.

## 2. ALBERTA.

[*Contributed by J. S. HENDERSON, ESQ.*]

Acts passed—Public, 26 ; Private, 54.

**Local Government.**—No. 2 is the Town Act. S. 8 provides for the incorporation of every town in the Province ; and the following sections make elaborate provision with regard to the election and powers, etc., of town councils and their officers. It may be noted that the mayor is “to be vigilant and active in causing the laws governing the town to be duly executed, to inspect the conduct of all town officers, and so far as in his power to cause all negligence, carelessness, and violation of duty to be duly prosecuted and

<sup>1</sup> This power, for which there has long been an insistent demand on the part of Western grain growers, is now being exercised on a considerable scale.

punished, and to communicate from time to time to the council all such information and to recommend such measures as may tend to the betterment of the finances, health, security, cleanliness, comfort, ornamentation, and prosperity of the town " (s. 23).

No. 3 is the Rural Municipality Act. Every municipality, so far as the same is practicable, is to comprise an area of 18 miles square or 324 square miles, and all municipalities are to be laid out on a uniform plan as nearly as the conditions of the system of Dominion land survey and the physical features of the Province will allow (s. 8). No city, town, or incorporated village is to be deemed to be included within the limits of any municipality to be organised under the Act (s. 10). A municipality may be organised on the petition of residents, provided that in the proposed area there is actually resident a population in the proportion of one person to each square mile (ss. 12, 13). An election may then be allowed to be proceeded with (s. 16). S. 43 enables an order of "disorganisation" to be made by the Lieutenant-Governor in Council, with consequent adjustment of assets and liabilities. Parts II. and III. deal with the constitution and procedure of the municipal council, and with elections thereto. Subsequent provisions deal with the power to make by-laws, financial matters, assessment, and taxation.

No. 11 constitutes a Department of Municipal Affairs with power to inspect municipal books, records, and accounts.

**Statute Law Revision.**—No. 4 amends the statute law in various details. One of the most interesting amendments is that made to the Legal Profession Act, requiring that every person before being enrolled shall take and subscribe in open court an oath containing the following, among other clauses: "That I will, as a barrister and solicitor, conduct all causes and matters faithfully, and to the best of my ability; I will not seek to destroy any man's property; I will not be guilty of champerty or maintenance; I will not promote suits upon frivolous pretences; I will not pervert the law to favour or prejudice any man, but in all things conduct myself truly and with integrity, in fine, the King's interest and my fellow-citizens' I will uphold and maintain according to the law in force in this Province."

**Highways and Bridges.**—No. 5 makes provision for traffic on highways and bridges.

**Motor Vehicles.**—No. 6 is the Motor Vehicle Act. It provides for the registration of those vehicles, the licensing of chauffeurs, the lights to be carried on vehicles, and the speed at which they may be driven. S. 23 prohibits the driving of a motor vehicle upon any public highway in a race or for a bet or wager. By s. 23 it is provided that when any loss or damage is incurred by any person by a motor vehicle, the onus of proof that such loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver. S. 40 enables any peace officer who on reasonable and probable grounds believes that an offence against the Act has been committed, whether it has

been committed or not, to arrest without warrant the person believed to have committed the offence.

**Hail Insurance.**—No. 5 prohibits the carrying on, except with the approval of the Lieutenant-Governor in Council, of the business of insurance against loss or injury to crops by hail.

**Liquor Licences.**—No. 8 amends the Liquor Licence Ordinance in numerous details.

**Boilers.**—No. 9 provides for the inspection of boilers.

**Railways and Telephones.**—No. 10 constitutes a department of the public service of the Province to be called "The Department of Railways and Telephones," and the Minister in charge of the department is given jurisdiction over railways and telephones. No. 15 amends the Railway Act in certain details.

**Surveys.**—No. 13 is the Surveys Act. It enables entry upon private lands, and provides as to the method of making surveys.

**Corrupt Practices.**—No. 20 deals with this subject. Bribery in connection with elections or the voting upon a by-law for raising money or creating a debt is made a punishable offence. Every person who hires or receives pay for the use of horses, teams, carriages or other vehicles for the purpose of conveying voters is likewise guilty of an offence (s. 4, sub-s. 7); as is also any person who uses threats to induce another to vote or refrain from voting (s. 5). S. 18 and following sections deal with the trial of contested elections.

**Early Closing.**—No. 23 enables the council of any city or town having a population of not less than 1,000 to fix the hours for the closing of shops or shops of a specified class. The hour fixed by such closing by-law is to be not earlier than six o'clock on any day of the week, but on one specified day the closing hour may be an hour not earlier than twelve o'clock noon. The closing by-law may prohibit the carrying on of any retail trade or business after the closing hour elsewhere than in shops.

**Pool Rooms.**—No. 24 regulates pool rooms, a "pool room" being defined as meaning and including any room or rooms in any building, house, shed, tent, or other place licensed by municipal or other authority in which a billiard or pool table is set up for hire or gain. No person under seventeen is to play any games in, or to frequent, enter, remain, or loiter in any pool room, and if he refuses to leave when requested to do so he may be forcibly evicted. Pool rooms must be closed on Sundays. Drunkenness and swearing are prohibited in pool rooms. Proprietors are made responsible for the acts of their servants. Power is conferred upon the Lieutenant-Governor in Council to make regulations regarding those rooms and bowling alleys outside the limits of any town.

**Theatres.**—No. 25 is the Theatres Act. It makes provision for regulating the safety of theatrical and cinematograph performances, and for the appointment of a censor or board of censors with power to prohibit the exhibition of films proposed to be used. An appeal lies from the censor or board of

censors to the person, body, or Court designated by regulation. The police may enter and inspect any cinematograph or other similar apparatus on exhibition.

**Egress from Public Buildings.**—No. 26 requires that the doors of all churches, halls, theatres, or other public buildings, and in all school buildings, shall open outwards.

### 3. BRITISH COLUMBIA.

[*Contributed by J. G. ARCHIBALD, ESQ.*]

Acts passed—Public, 49; Private, 13.

The Statute Law of British Columbia up to and including the year 1911 has now been consolidated in the "Revised Statutes of British Columbia, 1911." Subject to the English common law and Imperial statutes applicable to the Province, this revision may be said to contain the whole law of the Province.

The legislation for the session of 1912 consists mainly of amendments of greater or less importance to the revision of 1911.

**Forests.**—The most important new departure is the Forest Act (No. 17). This statute is one of very wide scope, and forms a general code of the law of the forest, so far as concerns the rights of the Crown and the public. It deals with sales, leases, licences, and other dispositions of timber lands by the Crown, with conservation and reforestation, with the prevention of fire, and with the regulation of the traffic in timber.

A new branch of the Ministry of Land is created for carrying the Act into execution. Among special provisions may be noted: the reservation of permanent forest reserves (s. 12), the granting of compulsory rights of way over private land for the transport of timber (s. 32), the compulsory marking with a registered mark of rafted or floated timber (s. 88), and the prohibition of export from the Province of unmanufactured timber (s. 100). The provisions for the prevention of fire (ss. 104 *et seq.*) are particularly elaborate. During the "close season"—May 1 to October 1—no person may kindle any fire in or near any forests or woodlands except for the purpose of clearing land, cooking, obtaining necessary warmth, or for some necessary industrial purpose permitted by the Minister, and in every case prescribed precautions must be observed. By s. 113 any fire burning within 200 ft. of a railway is presumed to have been caused by the railway company until the contrary is proved. By s. 125 a Forest Protection Fund is created, one-half being contributed by timber owners and one-half by the Provincial Treasury.

**Employment Agencies.**—Of the remaining statutes the Employment Agencies Act (No. 10) requires all employment agencies to take out an annual licence—subject to revocation for good cause—and prescribes a scale

of maximum fees. An employment agency may not be combined with the keeping of a lodging-house for employees.

**Protection of Girls.**—The Industrial Home for Girls Act (No. 11) gives power to send any girl under sixteen who is convicted of an offence punishable by imprisonment to an industrial home. The same course may be taken where a parent or guardian of a girl complains, and proves that by reason of “incorrigible or vicious conduct” she is beyond his control.

**Legal Profession.**—No. 18 allows women to be admitted to the study and practice of the law as barristers and solicitors on the same terms as men.

Nos. 3 and 15 contain a large number of amendments too detailed to be dealt with here to the Companies Act (R.S. 1911, No. 39), and the Land Registry Act (R.S. 1911, No. 127) respectively.

#### 4. MANITOBA.

[Contributed by J. S. HENDERSON, ESQ.]

Acts passed—Public, 101; Private, 53.

**Greater Manitoba.**—No. 6 extends the limits of the Province, but Crown lands, minerals, etc., in the added territory are to continue to be vested in the Crown, and to be administered by the Government of Canada.

**Building Regulations.**—No. 8 makes regulations with regard to scaffoldings and mode of erection of buildings. In cities and towns having no by-laws dealing with the subject covered passages are to be erected over side-walks where building operations are in progress adjoining a street, and all excavations are to be properly fenced.

**Children's Protection.**—No. 10 amends the Children's Protection Act, 1902, by enacting that no parent or guardian who by instrument in writing has surrendered the custody of a child to any children's aid society or to any of certain other similar institutions shall thereafter, contrary to the terms of the instrument, be entitled to the custody, control, or authority over, or any right to interfere with, such child. No parent or guardian is to surrender a child to any such institution without having first obtained the consent in writing of the Superintendent of Neglected Children. All societies and institutions placing children in foster homes are twice annually to supply information thereof to the Superintendent of Neglected Children.

**Companies.**—No. 12 empowers the Lieutenant-Governor in Council to appoint inspectors to examine into the affairs of any company. The inspectors may take evidence on oath.

**Bodies of Drowned Persons.**—No. 18 imposes the duty upon every officer, mayor, reeve, councillor, and alderman of any municipality within whose boundaries a drowning accident occurs to take immediate steps, at the expense of the municipality, for the recovery of the body. In case the accident occurs in a river or stream running between two municipalities



this duty and liability are to fall upon that municipality whose officer is first notified. The municipality recovering the body of a person who was resident in another municipality is given a right to recover from the latter municipality the expense incurred. Municipalities are to provide life-saving and dragging apparatus.

**Highways.**—No. 27 appropriates an annual sum for the improvement of highways, and provides how the work is to be done.

**Illegitimate Children.**—No. 29 is the Illegitimate Children Act. It provides for proceedings being taken against the putative father for the lying-in expenses and the maintenance of an illegitimate child. An order may also be made that the mother of the child shall bear part of the expense of maintenance, and requiring her to suckle the child for at least ten months, or until she produces a medical certificate that she is unable to do so. The putative father on an order of filiation being made is to enter into a bond in the penal sum of \$250, with sufficient sureties conditioned to fulfil the filiation order, or he must pay the lump sum fixed by the Court. On failure to furnish a bond or to pay the lump sum the putative father may be committed to prison for a term not less than six months and not more than twelve months. The putative father is liable to contribute to the medical and other expenses connected with the birth of the child, its maintenance and education until it is able to maintain itself, and with its burial in case it dies before being able to maintain itself; he is further liable for the expenses and care, medical and otherwise, of the mother of the child during three months previous to its birth, and during such period after its birth as medical or other special and unusual care and nursing are necessary in connection with or as a consequence of the birth of the child; and he is further liable to the expenses of the burial of the mother in case of her death at or in consequence of the birth of the child. No child under the age of fifteen is to be deemed able to maintain itself.

**Insurance.**—No. 30 amends the Insurance Act. It defines "automobile insurance" and "investment insurance," and enables licences to be granted for the carrying on of various kinds of insurance business within the Province.

**Legal Profession.**—No. 32 amends the Law Society Act by adding the following sub-section to the definition section: "The expression 'person' includes females."

**Liquor Licences.**—No. 34 provides that no local option by-law or repealing by-law is to be declared invalid for irregularities as to the taking of the poll or the counting of the votes if it appears to the tribunal having cognisance of the question that the proceedings were conducted substantially in accordance with the Act. It also makes provision as to licence fees.

**Lunacy.**—No. 35 enables the Inspector of Public Institutions as committee to deal with the estate of a lunatic without an order of the Court.

**Motor Vehicles.**—No. 39 enables municipalities to license automobile iveries

**Moving Pictures.**—No. 41 enables the city of Winnipeg to appoint a censor or censors of cinematograph films “with a view to the prevention of the depiction of scenes of an immoral or obscene nature, the representation of crime, or pictures reproducing any brutalising spectacle, or which indicate or suggest lewdness or indecency, or the infidelity or unfaithfulness of husband or wife, and any other such pictures as he or they may consider injurious to the morals of the city or any citizen thereof, or which may offer evil suggestions to the minds of children, or against the public welfare, or which may be likely to offend the public.” The city may also pass by-laws regulating film dealers and operators.

**Municipalities.**—No. 42 makes provision for the incorporation of villages.

**Sale of Offensive Weapons.**—No. 57 enacts that every person who exposes for sale, offers for sale, or sells any bowie-knife, dirk, dagger, stiletto, metal knuckles, skull cracker, or sling shot, or who sells a revolver, pistol, or air-gun to any person other than one holding a certificate under s. 118 of the Criminal Code, or one, being over eighteen years of age, who produces to or leaves with the vendor a permit in writing signed by the Chief of Police allowing him to purchase a revolver, pistol, or air-gun, shall be guilty of an offence, and liable to a fine not exceeding \$200 or less than \$25, or to imprisonment for a term not exceeding six months, or to both, and the bowie-knife, etc., shall be confiscated. Records of sales are to be kept. An alien found carrying any of the above-mentioned weapons may be ordered to be deported.

**Public Parks.**—No. 64 amends the Public Parks Act by providing, *inter alia*, that the expression “park purposes” shall include the furnishing of music or such other entertainment as the board may decide upon. The board may also acquire roads for access to parks.

**Public Utilities.**—No. 66 is the Public Utilities Act. The words “public utility” are defined as meaning and including every corporation other than a municipal corporation (unless it comes voluntarily under the Act), and every firm, person, or association of persons, the business and operations whereof are subject to the legislative authority of the Province owning, operating, managing, or controlling any system, works, plant, or equipment for the conveyance of telegraph or telephone messages, or for the conveyance of travellers or goods over a railway, street railway, or tramway, or for the production, transmission, delivery, or furnishing of water, gas, heat, light, or power either directly or indirectly to or for the public. By s. 4 a Commissioner, to be called the Public Utility Commissioner, may be appointed, who is to constitute a court of record. The Commissioner is given jurisdiction on questions as to the transportation of goods or passengers, to adjust rates when these are excessive or discriminating, to adjust disputes between public utilities and municipalities as to use of streets, etc. He may further compel railway companies to make connections with other railways, and to have general supervision over public utilities, and to make regulations.

**Revision of Statutes**—No. 72 empowers the Lieutenant-Governor in Council to issue a commission to two or more persons constituting them commissioners for revising and consolidating a new edition of the laws of the Province.

**Roads**—No. 73 is the Good Roads Act, its object being the improvement of highways and roads. A scheme may be adopted by a municipality, and by-laws for issue of debentures, etc., for meeting the expense of the improvements.

**Sale of Shares**.—No. 75 forbids the sale, or the advertising for sale, of shares of unlicensed foreign companies, foreign companies being defined as companies not organised or incorporated by or under the authority of the Legislature of the Province. From this provision are excepted stocks, bonds, or other securities of the Dominion of Canada or any Province thereof, or of any foreign country, or of any country, city, town, or of any Province or Territory of Canada, or of any stocks, etc., authorised by the Commissioner to be sold, or listed on any stock exchange which has been approved by the Commissioner.

**Taxation of Corporations**.—No. 90 provides for the taxation of loan, land, and trust companies transacting business in the Province.

**Threshers' Lien**.—No. 94 gives a lien for repairs to threshing machine or engine, or appliances used in connection therewith.

**Vital Statistics**.—No. 97 is an Act respecting the registration of births, marriages, and deaths. It provides for registration divisions and registrars. It prescribes the contents of notices of births, marriages, and deaths. Physicians, midwives, and undertakers are to be registered.

**Widows of Intestate Farmers**.—No. 98 enables the administrator of an intestate farmer to permit the widow of the farmer to carry on the farm for the benefit of herself and her infant children, the administrator not to be accountable for losses in connection with the business. The widow is to account for profits and losses.

**Maintenance of Wives and Children**.—No. 101 provides that whenever a husband has deserted his wife, or has refused or neglected to provide for her maintenance and that of his children, or when any person liable for the support and maintenance of any child under the age of sixteen shall, without lawful excuse (the burden of proving which shall be on him), desert or wilfully refuse to provide for the support and maintenance of the child, an application may be made to a police court for an order under the Act. The Court may make an order for weekly or other payments, and the provision of a bond conditioned for the fulfilment of its order, or the making of a deposit, and in default for the imprisonment of the husband or such other person. Applications under the Act may at the discretion of the Court be heard in private.

5. NEW BRUNSWICK.<sup>1</sup>

Acts passed—Public, 39 ; Private, 79.

Among the Acts of the Session, the most important is No. 6, which consolidates and amends No. 165 of the Consolidated Statutes, 1903, respecting municipalities, but the Act makes no changes of consequence in the existing law.

**Elections.**—By No. 5 the representation in the Legislative Assembly is increased to 48, the city of St. John and five counties having each 4 members, three counties each 3, seven counties each 2, and the city of Moncton 1.

**Liquor Licence.**—By No. 8 further restrictions on the sale of liquors in the Province are imposed. Every dealer or manufacturer who has any adulterated liquor or any deleterious ingredient according to the definition contained in No. 133 of the Revised Statutes of Canada, 1906, for the possession of which he is unable to account to the satisfaction of the Court, shall be deemed knowingly to have exposed for sale adulterated liquor, and shall be subject for the first offence to a penalty not exceeding \$400, and power is given to any Commissioner or inspector to take samples for the purpose of analysis. Any licensed person who allows liquor to be supplied on his premises to any minor or deaf mute, either on his own behalf or for any other person, shall be liable, as well as the person actually committing the offence, to a penalty of not less than \$10 and not exceeding \$20, and the sale of liquors by minors and the remaining of minors on licensed premises, or the employment of minors under the age of eighteen years in any capacity in connection with the business of selling and handling liquors, is penalised.

Further provision is made in the case of persons who are interdicted. The husband, wife, parent, child of twenty-one years of age or upwards, brother, sister, master, guardian, or employer may give a notice in writing to any person licensed to sell not to deliver intoxicating liquor to an interdict for a period of twelve months, and not only is a breach of the notice penalised by a fine not exceeding \$50, but the person giving the notice may in an action for a personal wrong recover damages of not less than \$20 and not exceeding \$500.

No person who sells upon trust or credit any spirituous liquor mixed or unmixed shall have any remedy in any Court, and any security the consideration for which is proved to have been for spirituous liquors so sold shall be deemed fraudulent and void in all Courts ; but these provisions do not apply to sales made under a wholesale licence.

Any person who shall, by means of an automobile, carry intoxicating liquor for sale into any county or locality or parish where the sale of liquor is prohibited shall be liable upon summary conviction to a penalty of not less than \$50 nor more than \$100.

<sup>1</sup> Based upon the Report relating to the Self-Governing Dominions published by the Dominions Department of the Colonial Office, Cd. 6863.

**Theatres and Cinematographs.**—By No. 13 power is given to the Lieutenant-Governor in Council to regulate the erection, apparatus, and safety of theatres and the licensing, using, and operating of cinematographs. He can also appoint a Board of Censors, consisting of three persons, who can permit or prohibit the exhibition of films and suspend for a cause the licence of any operator, subject to an appeal to a court or body prescribed by the Lieutenant-Governor in Council. No film may be exhibited until stamped as approved by the Board, and if so stamped no police officer or constable shall prohibit the exhibition of the film. No apparatus shall be kept or exhibited for entertainment without licence from the Provincial Secretary. Children under fifteen years of age, unaccompanied by adults, shall not be permitted to attend any cinematograph exhibition if an entrance fee is charged. Moreover, if through any breach of the Act or regulations bodily injury or loss of life is caused, the owner, manager, lessee, operator, or other person through or by whom the breach occurred shall be liable on summary conviction to imprisonment for a term not exceeding one year.

**Workmen's Compensation.**—By No. 32 certain amendments are made in No. 146 of the Consolidated Statutes, 1903. Under the Act compensation for the death of a workman shall be payable only to dependants at the time of his death resident in Canada, and who are partially or wholly dependent upon his earnings.

**Factories.**—By No. 40 provision is made that no child shall be employed or allowed to work in connection with any manufacturing or mechanical establishment except in special cases authorised in writing by the inspector. The factory inspector may demand of an employer or corporation the names of all children under sixteen years of age in their employ and may require the birth record or age certificate of the child to be produced. The penalty on the employer and the parent for a violation of this provision is not less than \$1 nor more than \$50 for each offence.

**Construction of Buildings.**—By No. 45 further provision is made for the removal of old, dilapidated, and unoccupied buildings and structures, although they are not dangerous within the meaning of existing legislation. It is provided that such buildings shall not be allowed to remain fronting on or near to any avenue, street, alley, or way in the city, and the owners are required to remove such structures. The procedure consists of a notification by the city, and if this is not obeyed the matter can be laid before a judge, together with an affidavit of an inspector of buildings recommending the removal of the buildings. The grand jury shall consider the notice and affidavit, inspect the premises, examine such witnesses as they think fit, and recommend whether the building or structure should be removed or demolished. It shall be conclusive proof that any building or structure is to be removed if it is supported by timber or other supports which do not form part of the construction of the building. If the grand jury present that the building should be removed, it shall forthwith be the duty of the owner to remove it or to repair it, and if

that is not done after the entry of the presentment the city shall be entitled to carry out the removal and to recover the costs and expenses, and in the case of the building being on leasehold land and when the holder of the lease cannot be found the costs may be recovered by action from the freeholder, who thereupon shall become possessed of the land leased free from the leaseholder's interest and shall also have a right to recover the sum paid from the leaseholder.

**Miscellaneous.**—Other Acts provide for town planning (No. 19), for the government of the city of St. John by an Elective Commission as decided by the voting of the citizens at the referendum of 1911 (No. 42), and the law relating to the Church of England in New Brunswick is consolidated (No. 78).

## 6. NOVA SCOTIA.<sup>1</sup>

Acts passed—Public, 76; Local, 104; Private, 63.

**Revenue.**—By No. 3 additional taxes are imposed on banks, insurance companies, loan companies, trust companies, telegraph companies, telephone companies, gas and electric companies, and express companies.

In the case of extra-provincial companies which have no agent within the Province, any person who does business with the company is required to retain from the moneys payable to the company an amount equal to the tax, which he shall pay to the Provincial Treasurer.

**Protection of Children.**—By No. 4 the law relating to juvenile delinquents is consolidated and amended. Provision is made for a Court to deal with juvenile delinquents, and a superintendent of neglected and dependent children is appointed, whose duty is to foster the organisation of children's aid societies and to inspect reformatories and children's homes. Children's aid societies may be formed by any number of persons not less than ten, and officers of children's aid societies may act as constables, and may apprehend and bring before the judge children apparently under the age of sixteen years who are found begging or wandering without fixed homes, or associating with thieves or persons of ill-repute, or destitute, and any child found after the hour of 8 p.m. in any moving picture theatre, vaudeville entertainment, or theatre of any kind not accompanied by his parent or guardian. The judge, after investigating, may order the child to be delivered to a children's aid society, and the society may detain the child in a temporary home or shelter pending the placing of it in an approved foster home. If such treatment is not suitable for the case the judge may either instruct the officer to take proceedings under the criminal law of Canada, or he may order the child to be committed to an orphan asylum, industrial school, or other institution, up to but not exceeding the age of eighteen years.

<sup>1</sup> Based upon the Report relating to the Self-Governing Dominions published by the Dominions Department of the Colonial Office, Cd. 6863.

The children's aid society shall arrange for the placing of the child in a suitable home at the cost of the municipality, which, however, is not liable for a greater charge than \$2 a week, and the municipality will have the right to recover the sum paid from the person liable under the law for the maintenance and support of the child. No Roman Catholic child may be placed in a Protestant home or *vice versa*. A child so placed in a foster home may, by order of the superintendent with the approval of the Attorney-General, be sent to a reformatory institution. The judge may require the parent to pay not more than \$80 a year to the society in respect of the maintenance of the child. Any theatre proprietor who permits a child to remain therein unaccompanied by a guardian or parent shall be liable to a fine of not less than \$10 nor more than \$100, and, in default of payment, to imprisonment for a term not less than thirty or more than ninety days. The giving or selling of cigars or cigarettes or any form of tobacco or snuff or opium to a person under sixteen years of age is punishable by a penalty of \$20, or, in default of payment, to imprisonment for a term not exceeding thirty days; and the smoking or owning of cigars by such a person renders him liable to a penalty not exceeding \$5, or to imprisonment for any term not exceeding seven days.

Provision is made for reformatory institutions in cases where sentences of imprisonment are imposed by judges of the Court. In each case of maintenance in a reformatory \$60 shall be paid by the municipality where the child has a settlement and \$40 out of the Provincial Treasury. The reformatories are duly authorised to detain children sent them, and, as far as possible, Protestants should be sent to Protestant institutions and Roman Catholics to Roman Catholic institutions. A child sent to a reformatory shall, within three years from the date of his being sent there, be given over to the custody of his parent or be placed in a foster home as the board of management of the reformatory and the superintendent of neglected children may deem advisable; but by direction of the superintendent he may be returned to a reformatory. Moreover, the Board of Management of a reformatory may board out a child without losing its control, and if the child escapes from that custody he may be deemed to have escaped from the institution, and may be brought back and detained.

Part IV. of the Act provides for child labour in shops, but it does not apply to members of a family dwelling in a building of which the shop is a part. A young person, which includes boys under the age of fourteen years and girls under the age of sixteen years, shall not be employed for a longer period than eight hours in any day, exclusive of meal times, nor four hours on Saturday; and on every day on which a young person is employed for more than four hours, not less than one hour shall be allowed for the noonday meal. The penalty for employing a person contrary to the Act is not exceeding \$20 for each person so employed, or to imprisonment for a term not exceeding one month in default of payment, and the parent is liable to similar penalties. A seat must be provided for every female employed in a

shop. An employer may be excused if he can show that the actual offender was some other person, and that he was not responsible for the breach of the Act, and thereupon the other person becomes liable. Special provisions are made for a simple and rapid procedure in such cases.

**Tenement Houses.**—By No. 5 elaborate provisions are made with regard to building rules in tenement houses in cities and towns of not less than 10,000 inhabitants, but only when the council of the city or town shall provide by by-law that the provisions are to be in force. Among other things, suitable rules are laid down to secure adequate light, ventilation, and the enclosure of stairs, and a basement must not be used for living purposes without a written permit from the health officer, which shall only be granted on proof of compliance with the provisions of the Act.

**Town Planning.**—No. 6 provides for the making and carrying out of town-planning schemes with a view to securing proper sanitary conditions, amenity, and convenience. Any city, town, or municipality may prepare a scheme with regard to any land which is in course of development, or appears likely to be used for building purposes, or may adopt a scheme proposed by all or any of the owners of the land. If necessary, there may be included within the scheme lands already built on and lands not likely to be built on, and buildings may be altered.

The council of any city, town, or municipality may make rules regulating the procedure in drawing up such schemes, and powers are given to enforce the carrying out of a scheme when it is finally drawn up. Compensation must be given for injury where it is claimed within the specified time. No compensation is payable where the improvements made are only such as could have been enforced if they had been contained in by-laws.

**Shade Trees.**—No. 7 provides for the planting and care of shade trees. The work is to be entrusted to three commissioners, being ratepayers, appointed by the city or town council for the term of three, four, or five years, respectively, after which the appointment shall always be held for five years, thus securing a rotation.

Various powers are given to these commissioners for the planting of trees, the cost being recovered from the owners of the property before which they are planted; the cost of caring for the trees when they have been planted shall be borne by the town or city.

**Settlement on Farm Lands.**—No. 10 recites that it is desirable that agricultural settlement should be further promoted; that there are in the Province farms unoccupied and untilled, arable tracts not yet brought under cultivation, and other lands available for settlement, and that it is desirable to settle on those lands selected farmers from the British Isles and elsewhere and to give assistance in the purchase of farms to those engaged in agriculture within the Province.

The Act accordingly provides that whenever a loan company, that is to say, a company carrying on within the Province the business of lending



money on mortgages of real estate, is prepared to advance to a farmer on mortgage of farm lands an amount not exceeding 80 per cent. of the value of the buildings and lands, the Governor in Council may authorise the Provincial Secretary to guarantee the company against loss on the mortgage to an amount not exceeding the difference between 50 per cent. of the appraised value and the amount of the loan together with interest. If the loan company will agree to advance to a farmer on a first mortgage of farm land and buildings an amount up to 50 per cent. of the value, the Governor in Council may arrange to advance an additional amount not exceeding 30 per cent. of such appraised value and not exceeding in any case \$2,500. The repayment of principal on any mortgage shall be first applied by the loan company as a reduction of the loan guarantee or advance, but the Governor in Council may agree to defer the repayment by the farmers of the instalment of principal and interest on the additional amount loaned or guaranteed for a period not exceeding five years. In all cases the appraisal shall be made by the loan company and confirmed by an inspector appointed by the Government.

The Act also authorises the Governor in Council to purchase real estate, to subdivide it, to erect buildings and fences and sell the real estate to farmers, and for the purpose of the Act he is authorised to borrow a sum not exceeding \$200,000.

**Succession Duty.**—The Acts relating to succession duty are amended and consolidated in No. 13. The Act is applicable not merely to all property situated in Nova Scotia, but to debts due from persons in Nova Scotia to any deceased person at the time of his death on specialty without regard to the place where this obligation or specialty shall be at the time of the death of the deceased. Moreover, no foreign executor may assign any bond, debenture, stock, or share of any bank or corporation having its head office in Nova Scotia standing in the name of the deceased or in trust for him unless the duty is paid.

**Companies.**—No. 15 contains a number of miscellaneous provisions with regard to companies both foreign and domestic, and, to some extent, assimilates the law of Nova Scotia to the English Act.

No corporation shall do business in Nova Scotia unless it has a certificate of registration, and every Dominion corporation and foreign corporation except those which have paid the annual registration fee payable under No. 127 of the Revised Statutes must file a statement with the Registrar, giving particulars of its name, its head office, its capital stock, etc. Every registered company must have an agent resident in the Province, service upon whom of legal documents shall be deemed sufficient service upon the corporation. Every registered corporation must each January file a statement of certain particulars, and may be required to give further particulars on request of the Registrar, and a scale of fees is provided, payable annually, in respect of registration. If a corporation carries on a business without

being registered it shall be liable to a penalty of \$10 a day, and a similar penalty is imposed upon every director, manager, secretary, agent, traveller, or salesman ; nor can a company which does not hold a certificate of registration still in force bring any action in any Court in Nova Scotia in respect to any contract made in whole or in part in Nova Scotia in connection with any part of its business done or carried on in Nova Scotia while it did not hold a certificate of registration which was in force, but the mere taking of orders or the buying or selling of goods, wares, or merchandise by travellers or by correspondence without resident agents or representatives or offices or warehouses shall not be deemed to be carrying on business ; the onus, however, of proving that it has not carried on business is placed in every case on the corporation. Penalties imposed under the Act for breaches of its terms may only be recovered in an action undertaken with the written consent of the Attorney-General of the Province.

Nos. 46 and 47 contain a number of detailed amendments of the Companies Act which are in general harmony with Imperial legislation on the subject.

**Municipal Sanitariums.**—No. 16 authorises any municipality or incorporated town to establish a sanitarium for the treatment of persons suffering with tubercular disease of the lungs, and more than one municipality may unite in providing sanitariums subject to the approval of the Governor in Council. No building may be constructed without the same approval, and the sanitarium when erected shall be under the control and management of the municipal or town council or of a joint board representing the municipalities, in the case of a joint sanitarium. Regulations for the management of sanitariums may be made by the Governor in Council, who may also grant one-fifth of the cost of the site, building, equipment, and improvements, provided that in no case shall the grant exceed \$4,000, and a further payment of \$1.50 cents for each individual per week may also be paid ; the total sum, however, payable to any one sanitarium under this head being limited to \$1,000 a year. The establishment and maintenance of a sanitarium are added to the purposes for which a municipality or incorporated town may levy rates.

**Fishing.**—By No. 18 important principles are laid down with regard to fishing in the Province.

Any resident of the Province is entitled to go on foot along the banks of any river, stream, or lake, upon and across any uncultivated lands—which includes lands partially or wholly cleared but otherwise in a natural state—and Crown lands, for the purpose of lawfully fishing with rod and line, and he may also go upon or across any river, stream, or lake in a boat or canoe for the same purpose. This right, however, shall not prejudice the right of any owner or occupant to compensation for actual damage, nor shall it be construed to give the right to build any fires upon such lands. These rights, however, shall not apply to the land of an occupant licensed under the

Act nor to lands other than timber lands and Crown lands of the Province situate in a municipality where no by-laws imposing any licences are in force. Any occupant other than an owner of timber land may obtain a licence from the municipal clerk of the municipality, which shall be in force for one year, and during that period the public rights shall be suspended in respect of the lands included in the licence. Municipal councils are empowered to regulate by by-law the issue of licences under the Act and to regulate the fees to be paid by occupants for such licences in respect to fishing rights appertaining to lands within their respective municipalities. But no fee payable shall exceed the sum of \$50, and all by-laws must be approved by the Governor in Council. The Act does not apply to a lake, river, or stream forming part of the water supply of any city or town.

**Game.**—No. 19 amends and consolidates the Acts for the preservation of game. Elaborate provision is made for close seasons in respect of the various classes of mammal, and special regulations are laid down as to the killing of moose and caribou. Certain privileges are given to residents as opposed to non-residents in the Province, and a Board of Game Commissioners is set up whose duties are to protect and propagate game within the Province, to appoint game wardens, to make provision for the issue and sale of licences, to disseminate information regarding the game and game laws of the Province, and to see to the enforcement of the game laws.

**Agriculture.**—No. 20 consolidates the Acts for the encouragement of agriculture, and provides for the duties of the department of the Secretary of Agriculture, the organisation and conduct of agricultural societies and their control by the Governor in Council, the holding of county exhibitions, and the encouragement of dairying, of horticulture, and of agricultural education.

**Public Utilities.**—No. 64 amends in detail No. 1 of 1909, which deals with public utilities. It is provided that no public utility shall carry on business in the Province without the consent of the Board of Public Utility Commissioners subject to regulations made under the Act. The provisions of the Act are to be construed liberally so as to effect the purposes of the Act, and the regulations of the Board are not to be deemed inoperative, illegal, or void for any omission of a technical character. No public utility shall abandon any part of its works after they have been operated without notice to the Board and without the consent in writing of the Board, and such consent shall only be given after notice to the municipality, town, or city interested, and after due inquiry.

## 7. ONTARIO.

The legislation of 1912 has already been reviewed in the Journal.<sup>1</sup>

<sup>1</sup> Vol. xiii. pp. 425-9.

8 PRINCE EDWARD ISLAND.<sup>1</sup>

Acts passed—Public, 24 ; Local and Personal, 36.

**Revision of the Statutes.**—The legislation includes an Act (No. 11) to authorise the revision and consolidation of the general statutes of Prince Edward Island, which is to be carried out by a commission whose duty shall be to consolidate those statutes of a general character which are within the jurisdiction of the Legislature of the Province. In the consolidation are to be included only those sections which appear to be in force, and the statutes may be altered to preserve a uniform mode of expression and to bring out the intention of the Legislature, to re-draft seemingly inconsistent enactments, and to correct clerical or typographical errors.

**Premier's Salary.**—No. 6 provides for the payment to the Premier of the yearly salary of \$1,500, payable monthly.

**Audit.**—By No. 7 further provision is made with regard to audit. The Lieutenant-Governor in Council may appoint three members of the Executive Council to be the Treasury Board. The Board shall act as a committee of the Executive Council on all matters relating to finance, and shall have power to call for reports and to make regulations for the government of the Civil Service.

The Lieutenant-Governor in Council may also appoint a Provincial Auditor to hold office during good behaviour, but to be removable for cause by the Lieutenant-Governor upon an address in which two-thirds of the members of the Legislative Assembly concur. The Provincial Auditor's duty shall be to audit all receipts and expenditure of public money, and no department shall authorise any expenditure until sufficient public money has been appropriated. The Provincial Auditor shall see that there is no cheque issued for payment of any public money for which there is no direct legislative appropriation, or in excess of any portion of such appropriation the expenditure of which has been authorised by the Lieutenant-Governor in Council, and he shall report to the Lieutenant-Governor in Council through the Provincial Treasurer any case in which money has been expended for any purpose for which there is no sufficient authority, or beyond the amount for which there is authority. But the Provincial Auditor may authorise, and the Provincial Treasurer may pay, any sum of money required to carry on the ordinary public services of the Province similar to those for which appropriation was made for the previous year from the beginning of the fiscal year until supply has been voted by the Legislature. No cheque may be issued except upon the certificate of the Auditor that there is legislative authority for the expenditure, unless the Attorney-General gives a written opinion overruling the

<sup>1</sup> Based upon the Report relating to the Self-Governing Dominions published by the Dominions Department of the Colonial Office, Cd. 6863.

objection in law of the Provincial Auditor, or unless an accident happens to a public work or building, or any other occasion arises when an expenditure is urgently and immediately required for the public good, provided that reports to this effect are provided by the officer in charge of the Department, and provided that the Lieutenant-Governor in Council authorises the signature by the Lieutenant-Governor of a special warrant, or if the Treasury Board has overruled the objection of the Auditor on legal grounds. In all such cases the Auditor must prepare a statement which the Provincial Treasurer is to present to the Assembly with the public accounts, and with any correspondence which the Auditor desires to be presented. Every cheque issued by the Provincial Treasurer must be countersigned by the Auditor, who must have satisfied himself that the issue of the cheque is authorised. In reporting the result of his examination of the appropriation accounts the Provincial Auditor is required to call attention to any special matters.

**Protection of Hospitals.**—By No. 20 provision is made that no suit or action or other proceedings shall be brought to charge the income or property of any hospital for misfeasance, non-feasance, or malfeasance, provided that in the selection and appointment of the staff reasonable care is exercised, and provided that the hospital is not conducted for the purpose of gain, and that all fees charged to any sick or injured person shall be wholly expended in the work of the hospital. Nothing in the Act shall relieve any physician, surgeon, specialist, nurse, matron, or other employee from liability for negligence.

**Taxation of Debentures.**—By No. 21 all debentures hereafter issued by the Province, or by any city, town, municipality, or board of trustees within the Province, shall be exempt from taxation for all provincial, civic, municipal, and school purposes.

**Miscellaneous.**—Other Acts provide for the maintenance of the highways of the Province (No. 1); for the assessment of land (No. 2); for public schools (No. 5); for the issue of debentures (No. 8); and for the settlement of farming land (No. 28).

## 9. QUEBEC.<sup>1</sup>

Second Session. Acts passed—134.

The legislation of the first Session has been reviewed in the Journal,<sup>2</sup> and the Acts passed in the second session were mainly of local interest.

**New Quebec.**—No. 13 recites the annexation of the territory of Ungava to the Province of Quebec since May 15, 1912, and provides for the

<sup>1</sup> Based upon the Report relating to the Self-Governing Dominions published by the Dominions Department of the Colonial Office, Cd. 6863.

<sup>2</sup> Journal, vol. xiii. pp. 430-1.

boundaries of the new territory, which shall be called New Quebec. The laws and regulations in force in the Province are declared to be in force in the territory in so far as they are applicable, but the Lieutenant-Governor in Council is authorised to suspend, in whole or in part, the hunting and fishing laws, and to make such regulations respecting these matters as he may deem expedient. All grants of land or other rights in New Quebec, except those relating to the Hudson's Bay Company or to the rights of the Indian inhabitants, if such last-mentioned rights exist, shall be notified to the Provincial Secretary within twenty-four months of the coming into force of the Act. For judicial purposes New Quebec forms part of the district of Quebec, but for the purpose of coroners' inquests it may be separated from that district. Power is given to the Lieutenant-Governor in Council to appoint justices of the peace; persons so appointed need not have the qualifications required of justices, but they must be British subjects and of the age of majority.

**Bureau of Statistics.**—No. 16 provides for the establishment of a Bureau in order to collect, condense, tabulate, and publish all sorts of statistics and information respecting agriculture, commerce, industry, education, colonisation and other matters of concern to the Province. A permanent Bureau is set up under the control of the Provincial Secretary, and all public officers of the Province are required to answer promptly any official communications from the Bureau and to collect and classify the facts or statistics called for by the Bureau. Arrangements may be made for interchange of information with the Government of Canada.

**Motor Vehicles.**—No. 19 amends the Revised Statutes of 1909 respecting motor vehicles. Whenever loss or damage is sustained by any person by reason of a motor vehicle on a highway, the burden of proof that the loss or damage did not arise through negligence or improper conduct of the owner or driver shall be upon the owner or driver, and the employer is made generally responsible with the driver if he is present in the motor vehicle at the time of the commission of any offence. The council of a city, town, or other municipality is given special power to set aside a special highway for testing purposes, and no action may be brought against an authorised officer of the Government for exceeding the speed limit while in the execution of his duty. Every motor vehicle shall be provided with a muffler, and it is provided that if a motor vehicle meets or overtakes a street car which is stationary for the purpose of taking on or discharging passengers, it shall not pass the car on the side on which passengers get on or off until the car has started and the passengers who have alighted have reached the side of the street.

**Roads.**—No. 21 provides for the contracting of loans by the Provincial Treasurer in connection with the making of roads in the Province. A rural village or part of a municipality may obtain a loan on passing a by-law and undertaking to pay 2 per cent. interest on the amount of the loan, for which purpose a special tax must be raised. City or town municipalities may obtain

loans in certain circumstances. Sinking funds must be provided for the repayment of the loans.

**Cinematographs.**—No. 36 amends the Revised Statutes, 1909, respecting cinematographs. The Lieutenant-Governor in Council is authorised to appoint a Board of Censors, consisting of three commissioners and a secretary, who shall receive pay from the Government, and who shall examine all films and permit or refuse the use thereof.

**Prevention of Fires.**—No. 38 provides for the appointment of a Provincial Fire Commissioner and of other officers. The duty of the Commissioner is to hold, when required to do so by the Minister of Public Works and Labour, an inquiry into every fire which has destroyed wholly or in part any building, forest, or property, and for this purpose he shall hold the power and jurisdiction of a judge of the sessions, of a recorder, or of a coroner. He is also authorised to enter any building and give any directions necessary to remove danger of fire, and to visit municipalities and inspect extinguishing apparatus and fire brigades. The Lieutenant-Governor in Council may devote annually not more than \$10,000 to the giving of premiums to village municipalities which supply themselves with efficient fire-extinguishing apparatus. To assist in defraying the expenses of the service there is imposed on all fire insurance companies doing business in the Province an annual tax of one-fourth of 1 per cent. on the aggregate amount of gross premiums collected in the Province.

**Juvenile Delinquents.**—No. 39 makes further provision regarding juvenile delinquents. Any ratepayer is authorised to bring before the justices children under fourteen years of age who are without parents, or who have only one parent, who is of bad conduct or has been condemned to gaol for a criminal offence, or who is not under proper control; and such children may be dealt with in accordance with the provisions of the Canadian Act, 7 & 8 Ed. VII. No. 40. Similarly, children who are habitually disobedient or run away from their parents may be sent to an industrial school by justices on the application of a parent or person responsible for the child.

**Protection of Fur-Bearing Animals.**—No. 45 provides for the encouraging of the raising of foxes and other fur-bearing animals in captivity by penalising trespassing on ranches where foxes are kept, and by authorising the killing of any dog which wanders near any enclosure in which such animals are kept and terrifies such animals.

## 10. SASKATCHEWAN.

[Contributed by J. S. HENDERSON, ESQ.]

Acts passed—Public, 42; Private, 29.

**Legislative Assembly.**—No. 2 amends the Legislative Assembly Act by dividing the Province into fifty-four electoral divisions instead of forty-one.

**Highways.**—No. 5 makes provision for the raising of money for the construction and improvement of public highways.

No. 7 constitutes a board of highway commissioners whose duty is to lay out, plan, and determine upon a system of public highways; to determine upon the most feasible and economic methods of doing the work; to appoint engineers, inspectors, and officers for the proper carrying out of the provisions of the Act; and to report annually to the Minister upon all work done and moneys expended.

**Female Labour.**—No. 17 provides that no person shall employ in any capacity any white woman or girl or permit any white woman or girl to reside or lodge in or to work in, or, save as a *bona fide* customer in a public apartment thereof only, to frequent any restaurant, laundry, or other place of business or amusement owned, kept, or managed by any Japanese, Chinaman, or other Oriental person. Contravention of the Act is punishable by a fine not exceeding \$100, and in default of payment imprisonment for a term not exceeding two months.

**Building Trades' Protection.**—No. 18 provides for the protection of persons employed on buildings, for the regulation of scaffolding and new buildings, and for the protection of the public by the erection of covered passage ways

**Demise of the Crown.**—No. 19 enacts that upon the demise of the Crown it shall not be necessary to renew any commission of any public officer, but a proclamation shall be issued by the Lieutenant-Governor authorising all persons in office to continue in the exercise of same.

**Fire Insurance.**—No. 22 enables the appointment of a Superintendent of Insurance who is to keep a record of documents filed by each company under the Act, to visit annually the head office or chief agency of each company in the Province and to examine carefully the statements of the condition of its affairs, and to prepare annual reports for the Minister. No company is to solicit or undertake any contract without having first obtained a licence, and before a licence can be granted it must make a deposit with the Minister.

**Prevention of Fires.**—No. 23 authorises the appointment of a fire commissioner with the duty of investigating the origin and circumstances of every fire in the Province by which property has been destroyed or damaged. He is to report to the Attorney-General where he is of opinion that there is sufficient evidence to charge any person with arson. He is also empowered, in the performance of his duties, to enter any premises where a fire has occurred, and adjoining premises.

**Offensive Weapons.**—No. 24 prohibits the sale of offensive weapons to unauthorised persons.

**Hail Insurance.**—No. 25 is the Hail Insurance Act. It provides that municipalities may undertake the indemnification of losers from hail, and it provides for the appointment of a hail insurance commission whose duty it



is to deal with claims for indemnity, and to distribute all moneys collected and remitted to it for the purposes of the Act.

**Seed Grain.**—No. 31 enables municipalities to borrow money for seed grain distribution.

**Horse Breeders.**—No. 35 is the Horse Breeders Act. It provides for the enrolment of stallions and for the granting of certificates. It prohibits in any advertisement offering the service of any stallion for breeding purposes any misleading statement; the advertisement must also contain a true description of the stallion and be accompanied by a copy of the enrolment certificate. S. 12 provides for the registration of a lien for service, and for the enforcement of such lien. Part II. of the Act deals with stallion districts and the constitution of a licensing board.

**Auctioneers.**—No. 36 requires all auctioneers to be licensed.

**Hawkers.**—No. 37 requires hawkers and pedlars to be licensed, and no hawkers or pedlar is to offer for sale any goods of any kind except those mentioned in his licence.

**Vehicles on Highways.**—No. 38 requires the registration of owners of motor vehicles, provides for all such vehicles being equipped with number plates, with adequate brakes and lamps. The Act deals with the rate at which these vehicles may be driven and the precautions to be observed in passing other vehicles.

**Illegitimate Children.**—No. 39 contains provisions for enforcing against the putative father of an illegitimate child his liability to contribute to the support of such child. S. 12 enables any person who furnishes food, clothing, lodging, or other necessities to any illegitimate child to maintain an action for the value thereof against the father of the child if the child was then a minor and was not living with the father.

## II. NEWFOUNDLAND.

Acts passed—19.

**Banks.**—No. 1 makes it compulsory for a bank doing business in the Colony to furnish to the Minister of Finance and Customs, before January 31 in each year, a statement of its business in the Colony for the year ending the previous December 31, under a penalty of \$10 for every day during which default may continue after the said date.

**Pharmacy.**—By No. 2 no person may import into the Colony any of the drugs or medicines specified in Schedule A to the principal Act, which it amends, unless such person has been admitted a member of the Newfoundland Pharmaceutical Society.

**Tuberculosis.**—No. 3 provides for the appropriation by the Legislature of moneys to conduct, equip, manage, and operate hospitals, sanatoria, or dispensaries for the treatment of inhabitants of the Colony suffering from tuberculosis and for the accepting, taking over, managing, operating, and con-

trolling any hospitals, sanatoria, or dispensaries which may be erected by any person or corporation in the Colony. It is provided that if any medical practitioner attending on any person becomes aware that such person is suffering from tuberculosis in any form or at any stage, such medical practitioner shall within seven days after he becomes aware of the fact send to the medical health officer a certificate in the form prescribed by the Act. The Act makes provision for the disinfecting of clothing and appointment of a committee of supervision and of medical superintendents, and for the making of rules and regulations by the Governor in Council. When premises are vacated by tuberculosis patients the medical health officer must be notified, and the duty is placed upon him within twenty-four hours after receipt of such notice to fumigate such premises.

**Education.**—No. 4 establishes a Teachers' Pension Fund and provides for the retirement of all teachers of public schools and colleges in the Colony who have reached the age of sixty years and who shall have completed thirty years of service as teachers in the Colony, and provides for the appropriation of the sum of \$20,000 for this purpose. An appropriation of the sum of \$10,000 is also provided for, which amount shall be paid to the Council of Higher Education, to be expended in premiums in places outside of St. John's, in prizes and scholarships and other matters incidental to the examinations of the Council.

**Copyright.**—By No. 5 the Act of the Imperial Parliament, 1 & 2 Geo. V. c. 46, entitled "An Act to amend and consolidate the law relating to Copyrights," is applied to the Colony of Newfoundland.

**Weights and Measures.**—No. 6 provides for the standard of weights and measures and appointment of inspectors, and the rights, duties, and powers of such inspectors.

**Elections.**—No. 7 repeals s. 9 of No. 3 of the Consolidated Statutes, Second Series, which provides for the registration of voters once in every four years, and substitutes therefor provision for the taking and revision of lists of electors before any election appointed to take place.

**Paper-making.**—No. 8 confirms an agreement entered into on April 9, 1912, between the Government and the American Newfoundland Pulp and Lumber Company of Grand Rapids, in the State of Michigan, in the United States of America.

**Boiler Inspection.**—By No. 9, if the owner of any boiler shall use or work or permit the use or working of the same before a certificate of inspection has been delivered to him by the inspector, such owner shall be liable to a penalty not exceeding \$100 for every day or part of a day during which such boiler shall have been used or worked.

**St. John's.**—By No. 11 it is provided that if in the opinion of the harbour master any vessel anchored in the harbour is likely to sink or become an obstruction to navigation, he may after twelve hours' notice to the owner or agent in St. John's of such vessel, or without notice where there is no owner

or agent in St. John's, take charge of and remove such vessel and may deal with and dispose of such vessel in such a manner as he shall think necessary for the free navigation of the port. The Act further provides that vessels arriving in the port of St. John's for coal, food, or supplies or for repairs, and not bringing cargo for delivery in the Colony and not taking from it any cargo which such vessel did not bring into the Colony, shall pay only one-half the harbour dues provided by s. 2 of No. 120 of the Consolidated Statutes, Second Series.

By No. 12 the St. John's Municipal Council is given power to accept and hold for the use of the inhabitants of the town of St. John's, and all others residing in the said neighbourhood or resorting to the said town, all that piece or parcel of land known as Rae Island Farm and situate at Waterford Bridge. The said land is to be set aside as a public park to be known as the Bowring Park. The Council is given authority to expend in the maintenance, management, and regulation of the said park such moneys as may be required out of its funds and revenues.

**Compulsory Purchase of Land.**—Under No. 13 it is provided that whenever in the opinion of the Governor in Council it shall become necessary for the purpose of the erection of any public building or for the construction of any public work, or for improving the approach to any public building or public work already erected, or for the purpose of affording greater light or air to any public building or for any similar public requirements to appropriate any land being private property, the Governor in Council may take such land as may be required for any of the above purposes and pay for the same out of the funds of the Colony. Provision is made for compensation and for the ascertaining of the amount of same by arbitration if the parties are unable to agree.

**Customs.**—No. 14 provides for the application of the provisions of s. 2 of the Act 7 Ed. VII. No. 28, entitled "An Act to amend the Customs Act, 1898," to goods imported from the United States of America, and also provides that every person who by any contrivance gains access to bonded goods in a railway car, or to goods in a railway car or in any other conveyance or place, upon which goods the customs duties have not been paid, or delivers such bonded or other goods without the express permission of the proper officer of the Customs, shall be liable to a penalty not exceeding \$400 and not less than \$50, or to imprisonment for a term not exceeding one year and not less than one month, or to both fine and imprisonment.

No. 16 provides for the removal of the duty on coal imported into the ports of Grand Bank and Fortune. The Act also places churns of all descriptions and poultry when imported for breeding purposes on the free list.

**Finance.**—No. 16 provides for the raising of a sum of money by the sale of debenture bonds of the Colony not exceeding \$250,000, to be applied in the extension of the telephone system of the Colony and the erection of lighthouses and fog alarms.

No. 18 provides for the raising of a loan upon the credit of the Colony of a sum of money not exceeding £400,000 sterling, to be applied to the building of five branch lines of railway, to connect with the Newfoundland Railway between St. John's and Port aux Basques.

## X. THE WEST INDIES.

### 1. THE BAHAMAS (1913).<sup>1</sup>

[Contributed by HON. HARCOURT MALCOLM, ESQ., K.C., *Acting Attorney-General, on behalf of the Bahamas Bar Association.*]

Acts passed—24.

The Session of the Legislature which was brought to end by prorogation on July 7 last is one of the longest on record for many years. For nearly eight months the legislative machine has been at work. The output has not been extraordinary either in volume or in importance. Twenty-four Acts have been added to the Statute Book and eight other bills for Acts were considered but were dropped in the House. One of the latter reached and was amended by the Legislative Council. The amendments, however, were not agreed to by the House, and as the Council insisted on these amendments the House laid the Bill and amendments aside. Consolidation is responsible for the bulk of the legislation—Local District and Special Constables, Intoxicating Liquors, Protection of Females, Registration of Births and Deaths, Manufactories and Hotels, Pilotage, Audit of Public Accounts, Electric Light and Telephones, Poisons and Drugs—these subjects show the diversity and steady progress of the work of consolidation.

New ground was broken in the subjects of the installation of Radio-Telegraphy, Money-Lending, Land Acquisition, Sale of Poisons, and the Segregation of Lepers.

And a matter of International interest was dealt with in giving effect to the measures decided upon in the International Opium Convention signed at the Hague in 1912.

The law and procedure in connection with Riots was brought into harmony with the spirit and form of Imperial and colonial legislation on the subject.

Among the bills which were not transmuted into Acts the most important by far was the one dealing with the Public Health. The subjects of the others included Lighthouses, Marine Carriage of Passengers, Public Markets and Slaughterhouses, and Public Officers' Pensions. The question of revising the Tariff also engaged the attention of the House, but was postponed until the next session.

<sup>1</sup> The legislation for 1912 was reviewed in the Journal, vol. xiii, p. 443.

**Motor Cars (No. 2).**—The Motor Car Amendment Act, 1913, reduces the annual registration or renewed registration fee of a car used solely in the course of trade or husbandry from £5 to £1.

**Births and Deaths (No. 2).**—The Births and Deaths Registration Act, 1913, is the first Act dealing comprehensively with the question of the registration of births and deaths which has been passed by the Legislature since 1850. The necessity for such a measure has been abundantly apparent for some time, and during the last four or five years efforts have been made to produce a bill which would be satisfactory to the House of Assembly. This Act is based upon the Trinidad Ordinance No. 56. The Governor is given power to divide the Colony into districts and appoint a Registrar-General and other Registrars.

**Pilots and Pilotage (No. 4).**—The Pilotage Act, 1913, takes the place of nineteen Acts and parts of four other Acts of which the consolidation has been under consideration for some time.

**Telegraph Department (No. 6)**—The Telegraph Department Act, 1913, creates one department to control the two—wire and wireless—systems of telegraphy and makes the operators interchangeable.

**Radio-Telegraphy (No. 7).**—The Radio-Telegraph Act, 1913, gives the Governor in Council power (a) to make arrangements for the establishment and maintenance of a radio-telegraphic station in New Providence in pursuance of the contract entered into by the Crown Agents for the Colonies with the Anglo-French Wireless Telegraph Co. Ltd., on December 3, 1912; (b) to erect other stations in any Out Island if and when the Legislature provides funds for the purpose; (c) to grant licences for the erection, construction, establishment, or maintenance of private instruments or apparatus for radio-telegraphic purposes, subject to such conditions and restrictions as he may prescribe; (d) to make all necessary rules.

All stations established under this Act are placed under the control of the Superintendent. Wide powers are given to the Governor in cases of emergency and public expediency to take possession on behalf of his Majesty of any wireless station in the Colony. Provision is made for punishing interference with the works or obstruction of the service of any station under the Act. Any employee under the Act is penalised who, contrary to his duty, discloses or intercepts the contents of any message. And any attempt to commit any of the offences mentioned in ss. 5 and 6 is punished summarily. The provisions of 2 Ed. VII. c. 22 and 3 Ed. VII. c. 17 are re-enacted in s. 8, which prohibits the erection and use of unlicensed instruments or apparatus. All stations erected with public funds are declared to be the property of the Government of the Colony.

**Audit of Public Accounts (No. 9).**—The Audit Act, 1913, as originally introduced into the House was merely a consolidating measure, but the House referred it to the Standing Committee on Public Accounts, and this Committee inserted a section which is analogous to ss. 21 and 32 of the

Imperial Audit and Exchequer Act, 1866, and which brings the Auditor more closely under the supervision of the House.

**Agriculture (No. 11).**—The Board of Agriculture Act, 1913, provides £750 a year for four years for carrying on experiments with a view to the agricultural development of the Colony. It is proposed to work along lines broader than, and differing radically from, those followed in making previous attempts, which unhappily resulted in failure. The maximum number of the Board is fixed at nine, of whom at least two must be members of the House of Assembly. The maintenance of a Botanical Station is left in the discretion of the Board. The employment of expert assistance is also discretionary with the Board, but is subject to the approval of the Governor.

**Hotel and Steamship Service (No. 13).**—The Hotel and Steamship Service Act, 1913, gives a general authority to the Governor in Council to enter into a contract for a steamship service with Florida and for hotel accommodation in Nassau for the period of five years at an annual subsidy not exceeding £5,000. As in previous Hotel Acts, there is exemption from certain import duties of customs and tonnage, light and other port dues, including pilotage.

**Public Acquisition of Land (No. 14).**—The Acquisition of Land Act, 1913, is the result of the efforts of the Government who have been endeavouring for a number of years to place an Act dealing with this subject on the Statute Book. But it was only during the last Session of the Legislature in consequence of the pendency of the question of the renewal of the hotel and steamship service with Florida that success crowned these efforts. The Act is an attempt to enable the acquisition of lands for public purposes by the simplest possible methods and to minimise the costs of such acquisition. The Act provides three modes of acquisition, namely: (a) by private agreement; (b) by arbitration; and (c) by compulsory purchase through the magistrate of the district where the land is situate when the assessed value does not exceed £200, or through the Court in the case of land above that value. Appeals lie in certain cases to the Chief Justice or to the Privy Council.

**Public Boards of Works (No. 15).**—The Boards of Works Act, 1913, corrects an unfortunate clerical error in numbering the sections of 2 & 3 Geo. V. No. 7 and abolishes the necessity for the Governor's counter-signature to conveyances of land to Out-Island Boards. The election of a temporary Chairman by the members of the Board is provided for. This is in pursuance of the recently adopted policy of the House of Assembly, and the provision for it is similar to that in other Acts of this Session, namely Nos. 4, 8 and 11.

**Constables (No. 16).**—The Constables Act, 1913, with the Police Act, 1909, completes the Police Code. The principal object of this Act was to leave the prescribing of districts and the appointment of local constables thereto discretionary and not obligatory as under the old law.

**Riots (No. 17).**—The Riot Act, 1913, is based on the English Statute 1 Geo. I., St. 2, c. 5, parts of the Grenada Criminal Code, and Mr. Anton Bertram's draft Bahamas Criminal Code. It includes the principal provisions of the English Statute commonly known as the Riot Act, which does not appear to have been extended to this Colony. It specially defines "unlawful assembly" and "riot," and makes them statutory misdemeanours, and declares that persons who do any acts with intent to provoke a riot shall be guilty of misdemeanour. The act of rioting while armed with an offensive instrument is made felony.

**Criminal Law: Females and Children (No. 18).**—The Criminal Law Amendment Act, 1913, consolidates four Acts and parts of another dealing with offences against women and children and includes some of the provisions of the English Act 4 Ed. VII. c. 15, relating to the prevention of cruelty to children.

**Lepers (No. 19).**—The Lepers Act, 1913, makes an attempt to provide for the isolation and segregation of lepers as effectively as possible with a minimum expense to the Colony, and without imposing any undue stringent conditions upon them. Provision is made for their isolation under proper conditions either in private houses or in the Leper Asylum, which is defined as any part of the Bahamas General Hospital, and restrictions are imposed on the landing of alien lepers in the Colony. No person can be treated as a leper without examination by two medical men.

**Money-Lending (No. 20).**—The Money-Lending Act, 1913, is practically a transcript of the Grenada Money-Lending Ordinance, No. 20 of 1911.<sup>1</sup> Useful powers in amplification of those already possessed by the Supreme Court are given to this Court as well as to any Magisterial Court to the extent of its jurisdiction. Until the passing of this Act there was no legislation in the Colony on the subject of money-lending.

**Opium Convention (No. 21).**—The Opium Act, 1913, is designed to give effect to the measures decided upon in the International Opium Convention signed at the Hague on January 23, 1912, and to regulate the importation of opium, morphine, cocaine, and similar drugs in the Colony. The Act is based on the draft Gold Coast Ordinance.

**Poisons and Drugs (No. 22).**—The Pharmacy Act, 1913, represents the result of the efforts which the Government has been making for several years to modernise the laws dealing with the sale of poisons and drugs. There had not been any legislation on the subject since 1875. The sale of medicines or drugs is restricted to properly licensed persons who are divided into four classes.

**Liquor Licences (No. 23).**—The Liquor Licences Act, 1913, consolidates all the existing legislation on the subject since 1899. New provisions dealing with clubs are the first local attempt to regulate these institutions. Provision is made for occasional licences for fêtes, etc.

<sup>1</sup> See Journal, vol. xiii. p. 458.

## 2. BARBADOS.

[Contributed by WALLWYN P. B. SHEPHEARD, ESQ.]

Act passed—31.<sup>1</sup>

**Sugar Trade (No. 2).**—The Molasses Mixing (Prohibition) Act, 1912, prohibits under penalty the sale or export of fancy or muscovado molasses mixed with vacuum pan molasses and of vacuum pan molasses unless in packages marked "V.P. Molasses."

**Legal Process (No. 3).**—The Letters of Request (Foreign Process) Act, 1912, regulates the procedure in civil or commercial matters pending in a Court of a foreign country on receipt by the Governor of a letter of request from such foreign Court for service on a person in Barbados of any process or citation in matters so pending.

**General Assembly of Barbados (No. 4).**—The Officers of the Assembly (Salaries) Act, 1912, restores the ancient right of the General Assembly to fix the salaries of their clerk, deputy clerk, and marshal, and to have those salaries paid from the Public Treasury without any further warrant.

**Statute Revision (No. 5).**—The Statute Law Revision Act (No. 2), 1912, enables the commissioners appointed by the principal Act (No. 1, 1911) to consolidate various Acts and their amending Acts, and the consolidated Acts are to have authority under and be subject to the provisions of this Act, which also enacts various amendments in certain of the Acts included in the statutory revision. The revised edition is to contain the alterations under this Act and the principal Act, and these two Acts are to be inserted in an appendix. The Statute Law (New Edition) Publication Act, 1912 (No. 8), provides for the Proclamation by the Governor that the Seal of Barbados has been affixed to the copies of the revised edition of the laws; such copies so sealed shall be taken to be a true copy of the lawful Statute Book of Barbados pursuant to the Statute Laws (New Edition) Act, 1909, s. 8.

**Geological Survey (No. 7).**—The Geological Survey Act, 1912, empowers the Governor in Executive Committee to appoint a surveyor to make a geological survey of Barbados with power to enter private lands in conformity with the provisions of the Act and for the purposes therein set forth.

**Deep-sea Fishing (Nos. 14 and 24).**—The Deep-Sea Fishing Boats (Registration) Act, 1912, requires all boats engaged in fishing beyond two miles from the shore to be licensed after compliance with the regulations of the Fishery Board constituted by the Act made for the purpose of ensuring the safety of the men employed in deep-sea fishing. The Act is to come into operation on January 1, 1913.

**Highways (No. 18).**—The Highways (Amendment) Act, 1912, requires all persons proposing to dedicate a road to the use of the public to give

<sup>1</sup> Acts are passed by the Governor, the Council, and the Assembly of Barbados, and are numbered consecutively for the calendar year.



three months' previous notice to the Commissioners of Highways, who are empowered to determine whether such roads are of sufficient public utility to be kept in repair at the cost of the parish, notwithstanding that there may have been a user thereof by the public.

**Criminal Law** (No. 16).—The Reformatory and Industrial School (Amendment) Act, 1912, is consolidated with and amends an Act on the subject passed in 1890. It makes the minimum period of detention three instead of two years, and provides for the supervision of the boys after the expiration of the period of detention up to the age of nineteen.

**Sale of Spirituous Liquors** (No. 26).—The Liquor Licences (Amendment) Act, 1912, amends and is consolidated with the principal Act, 1909, by transferring the jurisdiction vested in the Licensing Board constituted by the principal Act to the police magistrate of the district in which the business is carried on sitting with two justices of the peace.

**Petroleum** (No. 21).—The Petroleum (Amendment) Act, 1912, authorises the issue of licences for the importation and sale of volatile petroleum for fuel purposes only.

**Reciprocity** (No. 22).—The Canada and West Indies Reciprocity (Tariff) Agreement Act, 1912, adopts on behalf of Barbados the agreement entered into between the Government of the Dominion of Canada and the Governments of Trinidad, British Guiana, Barbados, St. Lucia, St. Vincent, Antigua, St. Kitts, Dominica and Montserrat, whereby the customs duties on certain scheduled Canadian goods (Schedule A) imported into the above-mentioned West Indian Colonies shall not exceed four-fifths of the duties imposed on like goods from foreign countries, and on Canadian flour the duties shall give a preference of not less than 12 cents per 100 lb., and a like preference of four-fifths of the customs duties is reciprocally accorded by Canada on imports into Canada of the goods (Schedule B) of the above-mentioned Colonies, with a special preference on raw sugar (not above No. 16 Dutch Standard) and molasses testing between 56 degrees and 75 degrees by polariscope of  $4\frac{1}{2}$  cents per 100 lb., with another  $\frac{1}{2}$  cent per 100 lb. for each degree above 75.

Certain scheduled goods of the above-mentioned Colonies (Schedule C) are to be imported into Canada free of duty, but the same goods imported from foreign countries are to pay the duties fixed by the schedule. The concessions by Canada are extended to the Bahamas, Bermuda, British Honduras, Grenada, Jamaica, and Newfoundland for three years, and may then cease in respect of such of the said Colonies as have not given Canada the concessions given by the other West Indian Colonies. Reciprocal powers are given to Canada and the above-mentioned Colonies to restrict the tariff concessions to goods shipped direct from and to the respective ports without transshipment, and the Canadian Government is to secure in all contracts with steamships subsidised by the Dominion an effective control of rates of freight. The Agreement is subject to the

approval of the Parliament of Canada and the Legislatures of the above-mentioned Colonies, and comes into operation by Proclamation in the *Canada Gazette* and the official *Gazettes* of the said Colonies, and shall continue for ten years, and thereafter be terminable in respect of any one of the parties at the end of one year after notice by such party.

The preference on goods in Schedule A is unconditionally extended to like goods from the United Kingdom.

**Customs Tariff** (No. 23).—The Customs Tariff Act, 1912, regulates the duties of customs inwards by dividing them into the British Preferential Tariff and the General Tariff, and provides that the Act shall come into operation simultaneously with the intercolonial agreement of April 9, 1912, adopted by the preceding Act, No. 22.

**Capital Punishment** (No. 25).—The Offences against the Person (Amendment) Act, 1912, amends the like Act of 1868, and provides that in respect of persons under the age of sixteen years the capital sentence shall not be pronounced, but in lieu thereof a sentence of detention during his Majesty's pleasure, and such sentence shall be carried out by the Governor.

**Public Trustee** (No. 26).—By the Court of Ordinary (Amendment) Act, 1912, the Imperial Public Trustee is exempt from bond or security on grant of administration.

**Quarantine** (No. 27).—The Quarantine (Amendment) Act, 1912, enables the Health Officers to visit and inspect persons subject to surveillance and unable to attend by illness at the Health Officer's office.

**Public Health** (No. 28).—The Public Health (Amendment) Act, 1912, amends and is consolidated with a similar Act, 1908. The Poor Law Inspector is appointed Public Health Inspector with certain defined duties. A Bacteriologist and Pathologist for the Colony is to be appointed by the Governor for the performance of certain duties in relation to the public health.

**Registration of Births, etc.** (No. 31).—The Registration of Births, Baptisms, Marriages, and Burials (Amendment) Act, 1912, is consolidated with an Act of 1891, and provides for the recopying of duplicate registers in a dilapidated condition and the certifying of such re-copies as records.

### 3. BRITISH HONDURAS.

[Contributed by WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—25.<sup>1</sup>

**Prisons** (No. 2).—The Prison (Rules) Ordinance, 1912, amends and is consolidated with No. 77 of the Consolidated Laws. The Governor in

<sup>1</sup> Ordinances are passed by the Governor with the advice and consent of the Legislative Council.

Council is empowered subject to the approval of H.M. Secretary of State for the Colonies to make rules for the management of prisons and the infliction of penalties and corporal punishments therein.

**Agricultural** (No. 3).—The Plant Protection Ordinance, 1912, empowers the Governor by proclamation to prohibit the importation of any seeds, cuttings, and plants, directly or indirectly, from any country named therein, either absolutely or except under the conditions prescribed in the Proclamation.

**Postal** (No. 12).—The Post Office Ordinance, 1912, prohibits under penalties the postage of letters or parcels enclosing any explosive or other dangerous material, and also of letters, etc., having indecent, libellous, or offensive words, marks, or designs thereon.

**Building Societies** (No. 16).—The Building Societies Ordinance, 1912, contains detailed provisions in fifty-five sections for the regulation and encouragement of benefit building societies.

**Fire Prevention** (No. 19).—The Fire (Negligent Use of) Ordinance, 1912, makes all persons having the immediate charge of any land or place liable to criminal procedure and penalties for negligent use of fire whereby danger shall arise to any building, land, forest, wood, trees, plants, or other produce of the soil, engines, carriages, fences, or other property.

**Fire Protection** (No. 23).—The Public Halls Regulation Ordinance, 1912, regulates the use of public halls for entertainment or other public purposes, and requires proper and sufficient exits both to such public halls as well as to all churches.

**Revenue Powers** (No. 24).—The Government Moneys Recovery Ordinance, 1912, authorises summary proceedings for the recovery of any tax, rents, fees, or other moneys payable to the Government at any time before the expiration of three years from the day on which they became payable.

#### 4. JAMAICA.

[*Contributed by R. ESCOMBE WILLCOCKS, ESQ.*]

Laws passed—36.

**Agricultural Loan Societies** (Nos. 6 and 36).—By the Agricultural Loan Societies Law, encouragement is given to Agricultural Loan Societies by means of loans from the Government. The Governor is empowered to appoint a Board—the Agricultural Loan Societies Board—"for the general control and superintendence of any Agricultural Loan Societies to which loans may be made." The powers of the Board are clearly defined. They may inquire into the proceedings of all Agricultural Loan Societies which apply for loans and may appoint auditors for any Agricultural Loan Societies to which loans may be made, and rules may be drawn up for the control and superintendence of such societies. These rules must be approved by the

Governor in Council (s. 5.) Loans to societies are not to exceed two-thirds of the share capital of the society to which the loan is granted.

In view of the provisions of the Agricultural Societies (Special Loans) Law (No. 6) the Government may make special grants to the Agricultural Loans Board for the purpose of enabling the Board to make loans to societies. In order that funds may be advanced to their members who are in possession of land the cultivation of which has sustained damage by drought or hurricane of the year 1912, the repayment of such loans by the society to the Board shall be secured in such manner as the Board may require (s. 4). All such loans are at the rate of 4 per cent. per annum.

**Plant Disease** (No. 17).—By the Protection from Disease (Plants) Law, it is lawful for the Governor by order to prohibit the importation of such “articles or things” which may introduce or spread plant disease. If it seems proper the Governor may only prescribe the conditions under which such “articles or things” are to be imported.

**Landlord and Tenant** (No. 18).—The Recovery of Small Tenements Law provides for the more speedy and effectual recovery of the possession of premises unlawfully held after the termination of the tenancy.

**Law Officers** (No. 19).—The Law Officers (Admission to Practice) Law provides that the Attorney-General and Assistant Attorney-General are to be deemed *ex-officio* barristers of the Supreme Court.

**Shops** (No. 23).—By virtue of the Shop Assistants (Hours) Law the periods of labour of a retail selling clerk in certain parts of the Island are regulated. The Act also provides that a weekly half-holiday shall be given to such employees and also seats for female assistants.

**Banking** (No. 28).—The Unclaimed Moneys (Bankers) Law provides that a yearly return shall be made by bankers of unclaimed securities and moneys. The Law further enacts that moneys remaining unclaimed for thirty years are to be advertised, and if not claimed within one year shall become part of the general assets of the Island (s. 5). The moneys so lapsed are recoverable from the bank as debts due to the Government (s. 6).

**Crime** (No. 29).—The Young Criminals (Transfer from Prison) Law makes it lawful for the Governor to transfer to a reformatory or other institution under Law 32 of 1910 persons under eighteen years of age who are detained in prison.

**Infective Diseases**<sup>1</sup> (No. 31).—The Infective Diseases Notification Law provides that where an inmate of any human habitation is suffering from infectious diseases, the head of the household to which such person belongs or any person in charge of the patient must notify the Local Board of Health (in Kingstown, the Medical Officer of Health). This law refers to the following diseases: (1) Plague; (2) Small-pox; (3) Cholera; (4) Diphtheria and Croup; (5) Scarlatina and Scarlet Fever; (6) Fevers (a) Typhus, (b) Enteric

<sup>1</sup> “Infective” includes both infectious and contagious (s. 12).

including Typhoid, (c) Yellow, (d) Puerperal; (7) Epidemic Cerebro-spinal meningitis; (8) Pulmonary tuberculosis; (9) Leprosy. The Governor may extend the provisions of this Ordinance to any other infective disease.

## 5. TURK'S AND CAICOS ISLANDS.

[*Contributed by* R. ESCOMBE WILLCOCKS, ESQ.]

Ordinances passed—5.

**Wild Birds** (No. 3).—The Wilds Birds' Protection Ordinance protects seventeen species of wild birds, including mosquito hawk, humming bird, blackbird, redshank, flamingo, osprey, and kingfisher. The eggs and nests of these wild birds are also protected. The Commissioner may grant leave to persons to kill or take these wild birds for scientific purposes (s. 7).

**Copyright** (No. 4).—This Ordinance repeals 11 Vict. No. 6 and adopts the Imperial Copyright Act of 1911.<sup>1</sup>

## 6. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—58.<sup>2</sup>

**Town Buildings** (No. 2).—The Port-of-Spain Building Ordinance, 1912, regulates the erection of buildings for public, domestic, and business purposes in the town; the repair or demolition of dangerous buildings; and in a schedule sets forth the by-laws for laying out new streets. All Crown property is exempted from the Ordinance.

**Money-Lenders** (No. 3).—The Money-Lending Ordinance, 1912, extends to the Colony the English Money-Lenders' Act, 1900,<sup>3</sup> in respect of re-opening transactions of money-lending and of false statements and representations for the purpose of inducing or misleading borrowers, with a saving clause as to payments made and judgments obtained before the commencement of the Ordinance (February 1, 1912). The Usury Ordinance (No. 73, Revised Statutes) is repealed.

**Oaths** (No. 11).—The Oaths Ordinance, 1912, requires all officers authorised to administer oaths to do so in the form and manner prescribed by the Ordinance.

**Cinematographs** (No. 12).—The Cinematograph Ordinance, 1912, regulates by means of licences the exhibition of cinematograph pictures, and gives powers of police inspection over such exhibitions.

<sup>1</sup> 1 & 2 Geo. V. c. 46.

<sup>2</sup> Ordinances are made by the Governor with the advice and consent of the Legislative Council, and Public and Private Ordinances are numbered consecutively for the calendar year.

<sup>3</sup> 63 & 64 Vict. c. 51.

**Employment of Women** (Nos. 13 and 46).—The Employment of Women Ordinance, 1912, and the Amending Ordinance, 1912, applies to all persons of the female sex, without distinction of age, and to industrial undertakings so declared by the Governor's proclamation. The Ordinance prohibits the employment of women in night-work with certain exceptions under the circumstances therein provided, and with penalties on employers acting contrary to the provisions of the Ordinance.

**Aliens** (No. 15).—The Aliens Ordinance, 1912, gives power to the Governor, for the preservation of peace and good order, to deport aliens.

**Pensions** (Nos. 23 and 24).—The Constabulary (Amendment) Ordinance, 1912, and the Pensions (Amendment) Ordinance, 1912, enable pensions to be attached for the maintenance of wives and children.

**Public Loans** (No. 25).—The General Loan and Inscribed Stock Ordinance, 1912, defines the terms and conditions applicable to loans thereafter authorised to be raised by the Legislature of the Colony, and provides for the creation of inscribed stock to meet the provisions of the Imperial Colonial Stock Act, 1877.

**Solicitors** (No. 29).—The Solicitors Ordinance, 1912, repeals Ordinance No. 105, Revised Statutes, and Solicitors Ordinance, 1906, and regulates the qualifications and conditions for the admission and enrolment of persons as solicitors in the Colony, and for practising therein under yearly licences. All jurisdiction and powers over solicitors vested in the High Court of Justice in England and the disciplinary powers exercisable by the Incorporated Law Society are vested in the Supreme Court of the Colony.

**Law Officers** (No. 30).—The Crown Law Officers Ordinance, 1912, enables the Attorney-General, Solicitor-General, and Crown Solicitor, *ex officio* as the law officers, to practise in the Courts of the Colony.

**Oil Mining** (No. 33).—The Oil Mining and Refining (Amendment) Ordinance, 1912, amends and is consolidated with the principal Ordinance, 1911. Every licensed person is to maintain the refinery in respect of which he is licensed in efficient order, and to put the same into active operation within thirty days of notice from the Governor, and continue the manufacture during such period as the Governor may direct of refined products, with powers for the Governor (*a*) to exempt the licensee from continuous refining under certain conditions, and (*b*) in event of war or an emergency to take complete control of the refinery.

**Interpretation of Ordinances** (No. 34).—The Interpretation Ordinance, 1912, requires as proof of the Governor's assent to an Ordinance that he affix his signature and the day, month, and year when the same was so affixed to five printed copies of the Ordinance sealed with the public seal of the Colony and immediately under such seal, and such signature and date shall be taken as part of such Ordinance, and when no other commencement is provided such date shall be the date of commencement.

The five copies are to be disposed of thus : Registrar of Supreme Court

for enrolment in the Court, one copy; the Legislative Council, one copy; H.M. Principal Secretary of State for the Colonies, two copies; the Governor, one copy.

Imperial Acts as to those before the seventh year of Henry VII. are to be cited by year of the reign, the statute, and the chapter; and after the fourth (*sic*) year of such reign by the year of the reign and the statute or the session and chapter or section without the title of the Act, and the references are to be made to copies of statutes printed by the King's Printer or to the copies contained in the Reports of Commissioners of Public Records.

Ordinances are to be cited by the short title (if any) or by the year and its calendar number in the year, or in the case of the Revised Edition of Ordinances by its short title or its number, and the reference is to be made to copies printed in England, or at the Government printing office or by the Government Printer. Principal and their amending Ordinances are to be construed together and cited in the plural under the short title of the principal Ordinance, and so cited the short title shall include all or any or either of such Ordinances.

Certain enumerated words and expressions are in all Ordinances and Rules, etc., thereunder to have the interpretations defined by the Ordinance, and words importing the singular number or masculine gender shall include several matters and persons as well as one matter and person, and bodies corporate as well as individuals, and females as well as males. As regards tenses and expressions of time, Ordinances, unless the contrary is expressed or implied, shall be regarded as constantly speaking. Illustrations or explanations in an Ordinance are to have the same effect as if contained in a judgment of the Supreme Court with reference to such enactment.

Ordinances giving authorities powers to make regulations are to include powers to amend, vary, rescind, or revoke, and to enact penalties for breach of regulations. Production of a copy of the *Royal Gazette* containing regulations to be *prima facie* evidence thereof in all Courts, and all powers and duties created by Ordinances are to be exercisable and performed from time to time as occasion requires, and by each and every holder of the office to which such power or duty is annexed.

Powers of appointment of public officers include powers of removal or suspension, etc., in the discretion of the authority in whom the power is vested. Distances in an Ordinance are to be measured in a straight line on a horizontal plane. Commencement means the time when the Ordinance comes into operation, and if a particular day is given the operation commences immediately on the expiration of the previous day, and acts and matters incidental to bringing an Ordinance into operation on a fixed day may be proceeded with immediately on the passing of the Ordinance.

Repeal of an Ordinance which repeals in whole or in part a former Ordinance shall not revive such former Ordinance unless such revival be enacted. Any Ordinance repealed, and for which another is substituted, shall

remain in force until the substituted enactment comes into operation. The repeal of any Ordinance shall not (1) revive anything not in force at time of repeal; (2) affect the previous operation of the Ordinance repealed; or (3) any right or obligation accrued or incurred thereunder; or (4) any penalty in respect of any offence thereunder; or (5) any investigation, legal proceedings, or remedy in respect of such right, obligation, or offence.

Orders-in-Council, rules, by-laws, etc., operative by virtue of a repealed Ordinance are to remain in force until the substituted provisions come into operation, so far as not inconsistent therewith. References to a repealed Ordinance shall be applicable to the Ordinance substituted for the same. Acts required by Ordinance to be done by more than two persons may be done by the majority.

Ordinances suspended for the Royal consent are not to come into operation until proclamation by the Governor notifies that they are not disallowed by his Majesty. No Ordinance affects rights of the Crown unless the contrary is expressed or implied.

The Interpretation Ordinances, No. 137, Revised Statutes, and the Ordinances of 1908 and 1910, are repealed.

**Motor Cars (No. 36).**—The Motor Car Ordinance, 1912, requires all cars to be registered with the Inspector-General of Constabulary under a separate number, and all drivers to be licensed, and the Courts have power to suspend licences and punish for breach of regulations and provisions of the Ordinance.

**Dogs (No. 37).**—The Importation of Dogs Ordinance, 1912, enables the Governor in Executive Committee to issue a proclamation prohibiting the importation of dogs into the Colony otherwise than in accordance with regulations restricting such importation, and No. 38, the Dogs (Muzzling) Amendment Ordinance, 1912, enables a magistrate to penalise persons on conviction for breach of the muzzling order under the principal Ordinance.

**Quarantine (No. 39).**—The Quarantine Amendment Ordinance, 1912, is consolidated with and amends the principal Ordinance, 1910, by giving the Governor power, without consent of any Colony in the Convention Agreement, to make special quarantine regulations to prevent introduction of disease by ships, persons, goods, or animals from a non-Convention country.

**Deer Protection (No. 42).**—The Deer Protection Ordinance, 1912, provides a close season for deer in the island of Tobago.

**School Teachers' Pensions (No. 43).**—The Assisted School Teachers' Pensions Ordinance, 1912, places teachers in assisted schools on the same footing with respect to pensions as teachers in Government schools.

**Public Authorities (No. 49).**—The Public Authorities' Protection Ordinance, 1912, limits the period for any proceedings against public officials by persons aggrieved to three months next after the act complained of, and enacts that judgments obtained by defendant are to carry costs as between



solicitor and client; that in an action for damages tender of amends before action commenced may be pleaded; that if an action be commenced after tender, or proceeded with after payment into Court of a money satisfaction, and plaintiff recovers no more than the amount tendered or paid in, then plaintiff is to lose his costs incurred after such tender or payment, and defendant is to have his costs as between solicitor and client as from such tender or payment, but costs on any injunction are excluded from this provision; that the Court may give defendant costs as between solicitor and client if plaintiff in the opinion of the Court has not given defendant opportunity of tendering amends before action commenced. Proceedings by Government departments against local authorities are excepted from the Ordinance.

**Immigration and Agricultural Aid Funds.**—Ordinances Nos. 52 and 53 levy taxes on the export of island produce, and appropriate the amount raised to immigration and agriculture respectively.

**Immigration Fees** (No. 56).—The Immigration Ordinance, 1912, makes employers liable to pay the immigration fees whether the immigrant be dead or incapable of work, or absent from the plantation to which he was indentured.

**Opium Traffic** (No. 58).—The Opium Ordinance, 1912, gives effect to the International Opium Convention signed at the Hague on January 23, 1912, and regulates within the Colony the importation, storage, and trade in opium, morphine, cocaine, and similar drugs.

## 7. THE WINDWARD ISLANDS.

### (i) GRENADA.

[Contributed by SIR CHARLES J. TARRING, *late Chief Justice of Grenada.*]

Ordinances passed—18.

**Noxious Weeds** (No. 2).—Any plant may be declared to be a noxious weed by the Governor with the consent of the Legislative Council by Order published in the *Gazette*. Power is given to the Governor to make regulations imposing upon the occupier or owner of land the duty of cleaning and keeping clean his land of noxious weeds, for preventing the introduction into the Colony or spread therein of noxious weeds, and prescribing the necessary procedure. Penalties are provided for disobedience. The love vine (*Cuscuta*) was the first plant brought under the ban.

**Opium** (No. 10).—This Ordinance was passed to give effect in the Colony to the International Opium Convention signed at the Hague on January 23, 1912, and to regulate the importation into the Colony and the storage and disposal therein of opium, morphine, cocaine, and similar drugs. The importation of prepared opium (as defined) is forbidden; while all other opium (as defined) imported must be deposited in an appointed store, only

to be withdrawn on a medical officer's written authority and entrusted to registered medical practitioners, dentists, and licensed chemists and druggists. Cultivation of the opium poppy (*Papaver somniferum*) is made illegal. Penalties are imposed and procedure for enforcing the Ordinance is provided.

**Magistrates** (No. 17).—This Ordinance extends their summary jurisdiction, and in that respect amends the Criminal Code of 1911.

**Amendment Ordinances** were passed to the following Ordinances, viz. Prisons (1896), Taxes Management (1911), Savings Bank (1911), Cinematographs (1911), Criminal Code (1911), District Boards (1905), Cocoa, Nutmegs, and Cotton (1911), Public Health (1911), Shipping (1911), Small Tenements, Recovery of Possession (1911).

Two Appropriation Ordinances were passed, together with an Import Duties Ordinance, which maintains the exemption of the Governor from payment of import duty on articles for his use, and an Ordinance to provide for the retrospective operation of Customs and Excise Duties Ordinances.

The Copyright of Books Act is repealed.

## (ii) ST. LUCIA.

[Contributed by WALLWYN P. B. SHEPHEARD, ESQ.]

### Ordinances passed—1911.<sup>1</sup>

**Tariff** (No. 1).—The Customs Tariff Ordinance, 1912, levies specific and *ad valorem* customs duties on importation of certain goods into the Colony and exempts other scheduled goods from customs duties, and makes no distinction in respect of countries of origin. The previous Tariff Ordinance of 1907 is repealed.

**Marriages** (No. 3).—The Deceased Wife's Sister Marriage Ordinance, 1912, legalises marriages contracted either before or after the Ordinance between a man and his deceased wife's sister, with a proviso that if before this Ordinance any such marriage has been annulled or either party thereto (after the marriage and during the life of the other) has married another, then such marriage shall be null and void upon and after the date of such annulment or marriage to another. No rights in respect of property shall be prejudicially affected or any will revoked by any existing marriage between a man and his deceased wife's sister being made valid by the Ordinance.

**Cinematographs** (No. 4).—The Cinematograph Ordinance, 1912, prohibits all cinematograph exhibitions without the permission of the Governor, who is empowered to make regulations to be observed and enforced in respect of such exhibitions.

<sup>1</sup> Ordinances are made by the Governor with the advice and consent of the Legislative Council of St. Lucia.

**Copyright** (No. 5).—The Books (Foreign Reprints) Importation Ordinance, 1850, Repeal Ordinance, 1912, repeals upon and from July 1, 1912, the Copyright Ordinance of 1850.<sup>1</sup>

**Bees** (No. 8).—The Importation of Bees Ordinance, 1912, prohibits importation of any queen-bee which is not certified to come from an apiary free from the disease known as foul brood.

**Wireless Telegraphy** (No. 10).—The Wireless Telegraphy Ordinance, 1912, prohibits the use of wireless telegraphy except under a licence granted by the Governor; and on merchant ships, whether British or foreign, when in the territorial waters of the Colony the use of wireless telegraphy must conform with the regulations made by the Governor and published in the *Gazette*. A previous Ordinance dealing with the subject, No. 12, 1903, is repealed.

(iii) ST. VINCENT.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—18.<sup>2</sup>

**House Tax** (No. 4).—The Land and House Tax Ordinance, 1904, Amendment Ordinance, 1912, amends and is consolidated with the principal Ordinance, 1904, and exempts from taxation houses of which the assessed annual rent is £2 or under.

**Life-Boats** (No. 7).—The Passenger Boats (Life-Saving) Ordinance, 1912, is consolidated with an Ordinance of 1906, and empowers the Governor from time to time to make regulations for life-saving apparatus and boats on passenger boats for the greater safety of passengers and crews.

**Public Officials** (No. 8).—The Public Officers' Guarantee Fund Ordinance, 1912, establishes a fund consisting of contributions from officers required to give security for the performance of the duties of their offices, and the accruing interest thereon, such contributions being 1 per cent. per annum on the amount of security required, and in substitution for any other or further security.

<sup>1</sup> This Ordinance and the Imperial Order-in-Council of 1850 give effect in St. Lucia to the Imperial Copyright Act of 1842. By the Imperial Act, 1845, regulating the trade of British possessions abroad, the importation into such possessions of foreign reprints of British copyright works is absolutely prohibited. This prohibition is qualified by the Imperial Colonial Copyright Act of 1847 with respect to such British possessions as should make legislative provision for securing therein the rights of British authors to the satisfaction of the Queen in Council. These various copyright provisions are now superseded by the Imperial Copyright Act of 1911.

<sup>2</sup> Ordinances are passed by the Governor with the advice and consent of the Legislative Council of St. Vincent.

**Aliens** (No. 10).—The Aliens Ordinance, 1912, gives the Governor power in respect of the preservation of the peace and good order of the Colony by order under his hand to be published in the *Government Gazette* to direct any alien therein named to depart from the Colony within a given time, and on his failure to comply makes it lawful for the police to arrest and commit the alien to prison until his deportation under the Ordinance is carried out.

**Shakerism** (No. 13).—The “Shakerism” Prohibition Ordinance, 1912, prohibits under heavy penalty the practice of “Shakerism” as defined by the Ordinance.

**Opium Trade** (No. 14).—The Opium Ordinance, 1912, gives effect to the measures decided upon in the International Opium Convention, signed at the Hague on January 23, 1912, and regulates the importation into and the storage and disposal of opium, morphine, cocaine, and similar drugs in the Colony of St. Vincent.

**Wireless Telegraphy** (No. 15).—The Wireless Telegraph Amendment Ordinance, 1912, amends and is consolidated with the principal Ordinance of 1904, and empowers the Governor-in-Council to make regulations (a) prescribing form of application for licences under the principal Ordinance and the fees payable on such licences; (b) controlling use of wireless telegraph apparatus on merchant ships, British or foreign, in territorial waters of the Colony; (c) and generally for giving effect to the provisions of the principal Ordinance. Persons are made liable to fine for breach of the regulations.

## 8. THE LEEWARD ISLANDS.

[Contributed by SIR CHARLES J. TARRING, *late Chief Justice of Grenada.*]

### THE FEDERAL COLONY.

Acts passed—14.

**Law Officers** (No. 3).—This Act prescribes the duties and fixes the salary of the Attorney-General, as also of his assistants, who are for the future to be designated Crown Attorneys. The Acts Nos. 3 of 1873, 5 of 1884, and 31 of 1897, are repealed.

**Marriage with Deceased Wife's Sister** (No. 7).—This Act legalises these marriages, including sisters of the half-blood under the word “sister.” Such marriages which have, before the passing of the Act, been annulled or followed by lawful marriages with others are excepted. Existing rights and interests are saved. Crown claims are not to be prejudiced. Devolution to the estates of lunatic intestates is not affected. Adultery with wives' sisters is preserved as giving a right to wives to sue for divorce. And divorce from or by his wife is to make marriage with the wife's sister unlawful.

**Commissioners for Oaths** (No. 10).—This Act provides for the appointment by the Chief Justice of commissioners to administer oaths in any court of the Colony and for the purposes of the Registration and Records Act, 1881, and the Title by Registration Acts. The Act is to have effect as commencing on June 20, 1889; and Act No. 10 of that year is repealed.

**Slander of Women** (No. 8).—Words imputing unchastity or adultery to any woman or girl are made actionable without special damage, with proviso against more costs than damages, unless the judge gives a certificate of reasonable ground.

**Amendment Acts** were passed to the following Acts: Unrepresented Estates (1884), Travelling Allowances (1907), Juries (1911), Stamps (1887), Registration and Records (1881); as well as an Act (No. 14) amending the Law of Criminal Procedure and repealing Acts 12 of 1872, 2 of 1873, 6 of 1876, and 4 of 1899.

Two **Appropriation Acts** were passed, Nos. 2 and 12.

### (i) ANTIGUA.

#### Ordinances passed—6.

**Wild Bird Protection** (No. 2).—This Ordinance makes it illegal to kill, wound, or take any of sixteen birds specified in Schedule A, or to take or destroy any of their nests or eggs, or expose for sale or have in one's possession any one or any part of one of them killed, wounded, or taken in the Presidency, or to export or try to export their skin or plumage. A close season for nine birds is specified in Schedule B, between February 1 and July 15 inclusive. The Governor is empowered to authorise, by writing, any person, subject to conditions, to kill, wound, or take for scientific or other purposes any bird specified in either of the two Schedules. He may also vary by proclamation duly published the close season for any bird; and add the name of any bird to, or remove the name of any bird from, either of the schedules.

**Defence Force Consolidation** (No. 5).—This Ordinance empowers the Governor to raise, and appoint and pay officers to, the Defence Force, and make the necessary regulations and standing orders. The appropriate provisions of the Army Act are applied. Pay and allowances during actual service are provided for. Service in certain circumstances may be made compulsory. Ordinances Nos. 8 of 1903, 4 of 1906, 6 of 1908, and 8 of 1910 are repealed.

**Defence Reserve Consolidation** (No. 6).—This Ordinance authorises the Governor to form a Defence Reserve and, whenever he deems it advisable by reason of invasion or war or danger of either, or of internal emergencies threatening security of life or property to quell which he deems the available civil force inadequate, to enrol its members in the Defence Force. Ordinances Nos. 7 of 1904 and 7 of 1908 are repealed.

**Copyright Repeal.**—No. 3 repeals Act No. 110, dated October 24, 1849, authorising the importation of foreign reprints of books entitled to copyright in the United Kingdom.

The usual **Appropriation Ordinance** (No. 1) was passed.

(ii) DOMINICA.

Ordinances passed—7.

**Amendments** were passed to the following Ordinances, viz. Dominica Forests, Limited, Acquisition of Lands (1910), Marriage (1910), and Agricultural Produce Protection (1905).

**Starches** are exempted (No. 7) from export duty for five years.

Two **Appropriation Ordinances** (Nos. 1 and 6) were passed.

(iii) MONTSERRAT.

Ordinances passed—6.

**Treasury Boatmen** (No. 2).—This Ordinance establishes a service of Treasury Boatmen for the Presidency of such numbers as the Governor may from time to time direct, to be appointed by and under the orders of the Commissioner.

**Defence Force Consolidation** (No. 5).—This Ordinance is for the same purpose as and similar to Ordinance No. 5 of Antigua.

**Defence Reserve** (No. 6).—This Ordinance is for the same purpose as and similar to Ordinance No. 6 of Antigua.

The usual **Appropriation Ordinance** (No. 1) was passed.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—6.

**Public Roads Traffic** (No. 3).—This Ordinance imposes the duty of carrying lights on drivers and riders of vehicles and bicycles (as defined) between one half-hour after sunset and one half-hour before sunrise, and of giving audible warning by bell or other instrument when overtaking vehicles, bicycles, beasts, or foot passengers.

**Roads** (No. 4).—This Ordinance provides for the construction and maintenance of the roads mentioned in Schedule A, including bridle-paths, lanes, causeways, footways, and bridges. The Governor is authorised to appoint a surveyor, and his salary is fixed. Power is given to the Governor in Council to declare new roads and abandon old ones, and sell or lease them; to vary Schedule A; to divide the Presidency into districts and cantons; and to make and annul contracts for repair and maintenance of roads. Adjacent landowners are made liable to repair injury to roads by water flowing from their lands by neglect, and to keep boundary fences and

dry stone walls in repair. Trees or shrubs growing on the edge of precipitous parts of any road may not be cut down or damaged. Adjacent buildings may not be allowed by their owners to become dangerous to the public or the occupiers of neighbouring buildings. Damage to roads, their drains or ditches, to bridges, culverts, walls, milestones, roadmarks, or any mason or other work of, upon, or belonging to any road is forbidden under penalty, as well as obstruction, free passage, or suffering offensive matter to flow into or upon any road.

**Basseterre Factory Pier** (No. 5).—This Ordinance facilitates the erection of, and authorises the collection of dues, for the use of, a private pier. It takes effect from February 1, 1911.

**Copyright** (No. 2).—This Ordinance repeals Act No. 85 of 1849 of the Islands of St. Christopher and Anguilla authorising the importation of books being foreign reprints of books copyrighted in the United Kingdom.

Two **Appropriation Ordinances** (Nos. 1 and 6) were passed.

#### (v) THE VIRGIN ISLANDS.

Only two **Appropriation Ordinances** were passed.

## XI. MEDITERRANEAN COLONIES.

### I. GIBRALTAR.

[*Contributed by R. ESCOMBE WILLCOCKS, Esq.*]

Ordinances passed—10.

**Merchant Shipping** (No. 3).—The provisions of the Merchant Shipping Ordinance, Gibraltar, 1886, relating to steamers or steamships are now applicable to ships propelled by electricity or other mechanical power.

**Intestates' Estates**.—Ordinance No. 4 makes provision to the extent of £500 for the widows of men who die intestate and without issue. This sum is payable by the real and personal representatives of the deceased's estate in proportion to the value of the real and personal estates respectively. The provision will not affect a widow's right to share in the residue of estate remaining after the payment of the £500, in the same way as if the residue had been the whole of the estate.

**Land Transfer**.—The Land Transfer Ordinance, Gibraltar, 1912 (No. 5), follows the lines of the Land Transfer Act, 1897, of the United Kingdom, and establishes a real representative. Accordingly the real estate of a deceased person and real estate appointed by him will now devolve on his executor or administrator.

**Perjury** (No. 6).—The Perjury Ordinance consolidates the law relating to perjury and kindred offences, and follows the English Perjury Act, 1911.<sup>1</sup>

<sup>1</sup> 1 & 2 Geo. V. c. 6.

**Animals** (No. 7).—The Protection of Animals Ordinance is to prevent animals being subjected to cruel treatment. Powers are given to the Court to deprive persons convicted of cruelty of the ownership of animals (s. 4). This order, however, cannot be made unless it is shown by evidence that there has been a previous conviction or that the accused person's character is bad, and that the animal, if left with the owner, is likely to be exposed to further cruelty.

**Conveyancing** (No. 8).—The Conveyancing Ordinance is to be construed with the English Conveyancing and Law of Property Acts, 1881 and 1882, and they may be cited together as the Conveyancing Laws, Gibraltar, 1881-1912. The Ordinance makes a few additions to the English Act of 1881, and s. 39 is repealed.

**Petroleum and Military Stores** (No. 10).—The Petroleum and Military Stores Ordinance forbids (except for naval and military purposes) the importation of arms, ammunition, etc., nitroglycerine, dynamite, petroleum (commonly called "dangerous" or "high-test" petroleum, which is tested in the manner set forth in s. 2 of the English Petroleum Act, 1875), without a permit from the Chief of Police or magistrate's licence. In the case of petroleum for lighthouse purposes, no licence is required.

**Evidence** (No. 11).—The Children's Evidence Ordinance is a very interesting and much-required piece of legislation. The Ordinance enacts that in cases "where a justice is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a Court of any child (persons under fourteen) or young person (persons between fourteen and sixteen) in respect of whom any of the offences mentioned in the schedule to this Ordinance is alleged to have been committed, would involve serious injury, danger to the life or health of the child or young person, the justice may take in writing the deposition of the child or young person on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking the deposition, and of the day when and place where the deposition was taken, and of the names of the persons (if any) present at the taking thereof" (s. 3 [1]).

The Ordinance further deals with the question of administering an oath to a child in respect of whom the offence forming the subject of the charge is alleged to have been committed, or to any child of tender years called as a witness.

If the Court is of the opinion that the child does not understand the nature of an oath, but is possessed of sufficient intelligence to understand the duty of speaking the truth, the evidence of the child shall be reduced to writing and shall be deemed to be a deposition within the meaning of s. 15 of the Justices Ordinance, 1890 (s. 5).

In such cases a person shall not be liable to conviction unless the testimony of the child is corroborated by some other material evidence (s. 5 [a]).



## 2. MALTA.

[Contributed by J. D. CASSWELL, ESQ.]

} Ordinances passed—6.

**Police Laws.**—No. 4 amends certain articles of the police laws and contains the following new provisions of interest. It is unlawful to append or affix papers or other things to any place with regard to which an express prohibition to that effect is made by the owner or occupier. The sale of “old metals” without a licence is prohibited. “Old metals” are defined as “any old metal, scrap metal, broken metal or partly manufactured metal goods, or defaced or old metal goods.” In addition to holding a licence a dealer in old metals must conform to certain regulations. He must not purchase or receive them before eight in the morning or after sunset; he must produce to the police, when requested to do so, any old metals then in his possession; he must give to the police, on request, an account of any old metals which he has sold or disposed of, stating the name and other particulars of the person to whom he sold or disposed of such metals; he must without delay give notice of any articles that have come into his possession answering to the description of any articles of which he has received notice from the police that they were stolen or improperly obtained; and he must keep all old metals purchased or received by him, without changing their form, and must not dispose of them for a period of forty-eight hours.

## 3. CYPRUS.

[Contributed by J. D. CASSWELL, ESQ.]

Laws passed—7.

**Foreign Tribunal Citations.**—No. 4 lays down provisions for the service of process or citations on persons in Cyprus in relation to civil or commercial matters pending before foreign courts or tribunals. The service must be effected by a process-server, appointed by the High Commissioner, delivering to and leaving with the person to be served a copy of the process, and of the translation thereof, in the language of such person, if he is a native of Cyprus, and in all other cases in the English language. Further provisions deal with the proof of the costs of serving. An order for substituted service in these cases may be made by the Court on the application of the King’s Advocate with the consent of the Chief Secretary. Power to make rules under this Law is conferred on the High Commissioner, acting on the advice of the Chief Justice. And he may by such rules either amend or repeal any of the provisions of this Law.

**Interpretation Law.**—An amending Law (No. 6) provides for the publication in the *Cyprus Gazette* of every Law enacted in the island as soon as

possible after it has received the assent of his Majesty or the High Commissioner. Unless any other time is specified every Law will come into operation on the day of such publication.

**Official Trustees.**—Officers known as “Official Trustees” may be appointed by the High Commissioner in Council. They will be entitled to undertake the following duties :

- (a) The duties of a guardian to be appointed by any Court under the provisions of the Infants’ Estates Administration Law, 1894.
- (b) The duties of any Juge-Commissaire, trustee in bankruptcy, or syndic, or person to be appointed by any Court to administer the estate of a person adjudged bankrupt under the Ottoman Commercial Code.
- (c) The duties of an executor or administrator under the will of any person.

Any of these officers may be appointed in any of the foregoing capacities by any District Court or Supreme Court and may be dismissed at any time on application to or on the motion of the Court. They will be deemed officers of the Supreme Court and of the Court by which they are appointed.

The Government of Cyprus will guarantee estates entrusted to official trustees against any loss directly caused by the fraud of the trustees. Official trustees will be subject to the same liabilities as ordinary trustees, and in addition they will have to furnish security for the faithful performance of their duties.

## INDEX TO REVIEW OF LEGISLATION

	PAGE
ACCIDENT: insurance of workmen against (Russia) . . . . .	60
——— workmen, to, compensation. <i>See</i> Labour.	
Accounts, audit of. <i>See</i> Audit.	
Administration of justice, uniformity (Union of South Africa) . .	172-173
Adulteration of food (Isle of Man) . . . . .	68
Advertisements, control of (Hong Kong) . . . . .	81
Advocate. <i>See</i> Legal Profession.	
Aerial navigation. <i>See</i> Aviation.	
Affiliation orders (Papua) . . . . .	154
Aged and infirm persons, protection of property of (Dominion of New Zealand) . . . . .	163-164
Agriculture: banks to advance for (Western Australia) . . . .	151-152
——— cattle, contagious diseases of (Tasmania) . . . . .	136
——— cotton, protection of (Egypt) . . . . .	50
——— Department of, creation of (Mauritius) . . . . .	93
——— diseased plants, power to destroy (Seychelles) . . . .	94
——— encouragement of (Nova Scotia) . . . . .	215
——— experiments, fund for (Bahamas) . . . . .	226
——— fertilisers, sale of (Tasmania) . . . . .	135-136
——— fruit: cases (New South Wales) . . . . .	105
——— ——— (Queensland) . . . . .	115
——— ——— sale, regulations of local authority (Southern Rhodesia) . . . . .	184
——— ——— trees, taxation of (Tasmania) . . . . .	136
——— fund in aid of (Trinidad and Tobago) . . . . .	237
——— grain: seed, borrowing for (Saskatchewan) . . . . .	221
——— ——— storage and transport of (Dominion of Canada) .	199-200
——— hailstorm, insurance of crops against (Alberta) . . . . .	202
——— ——— municipalities, by (Saskatchewan) . . . . .	220-221
——— irrigation (New South Wales) . . . . .	108
——— light railways (U.K.) . . . . .	67
——— loan societies (Jamaica) . . . . .	231-232
——— noxious weeds, clearing (Grenada) . . . . .	237
——— peasant proprietors, bettering condition of (Egypt) . . .	49
——— plant pests, exclusion of (British Honduras) . . . . .	231
——— ——— (Jamaica) . . . . .	232
——— ——— (Gold Coast) . . . . .	185
——— ——— (Nyasaland). . . . .	197
——— ——— diseased plants, power to destroy (Seychelles) .	94

	PAGE
Agriculture: Planters' Benevolent Fund (Federated Malay States) . . . . .	90
——— seed, borrowing for (Saskatchewan) . . . . .	221
——— settlement on farm lands (Nova Scotia) . . . . .	212-213
——— ——— ——— ——— (Prince Edward Island) . . . . .	217
——— small holdings (France) . . . . .	50-51
——— sugar trade (Barbados) . . . . .	228
——— technical schools of (Egypt) . . . . .	50
——— widow of intestate farmer may carry on farm (Manitoba) . . . . .	207
Alberta, Legislation of . . . . .	200-203
Aliens, deportation (St. Vincent) . . . . .	239
——— ——— (Trinidad and Tobago) . . . . .	234
Alligator societies, suppression of (Sierra Leone) . . . . .	188
Animals: bees, importation (St. Lucia) . . . . .	239
——— birds, protection of, useful for agriculture (Egypt) . . . . .	50
——— ——— wild. <i>See</i> Birds.	
——— calves, slaughter of (Egypt) . . . . .	50
——— cattle, contagious diseases of (Tasmania) . . . . .	236
——— deer, close time for (Trinidad and Tobago) . . . . .	236
——— dogs: importation of (Trinidad and Tobago) . . . . .	136
——— ——— licencing and control of (Nyasaland) . . . . .	196
——— ——— tax on (Southern Rhodesia) . . . . .	184
——— ducks, protection of (Falkland Islands) . . . . .	198
——— elephants, regulating kraals for (Ceylon) . . . . .	77
——— fur-bearing, protection of (Quebec) . . . . .	219
——— game, protection of (Natal) . . . . .	180-181
——— ——— (Nova Scotia) . . . . .	215
——— ——— restriction on killing (Victoria). <i>See also</i> Game.	138
——— horse breeding, stallions (Papua) . . . . .	157
——— ——— ——— (Saskatchewan) . . . . .	221
——— protection of (Gibraltar) . . . . .	244
——— ——— (Papua) . . . . .	154
——— ——— (South Australia) . . . . .	128
——— ——— assimilation of Scotch law to English (U.K.) . . . . .	67
——— rabbits (Queensland) . . . . .	119
——— reindeer, protection of (Falkland Islands) . . . . .	198
——— seals, convention as to (U.K.) . . . . .	67
——— slaughtering sheep and cattle (Papua) . . . . .	155
——— stallions, certificate (Saskatchewan) . . . . .	221
——— ——— licencing of (Papua) . . . . .	157
——— stray, sale of, when impounded (Victoria) . . . . .	138
——— upland goose, protection of (Falkland Islands) . . . . .	198
——— veterinary board (Western Australia) . . . . .	147
——— whales (Falkland Islands) . . . . .	198
——— ——— (St. Helena) . . . . .	199
——— wild birds and animals, protection of (British India) . . . . .	71-72
——— ——— ——— (Falkland Islands) . . . . .	198
——— wild dogs, destruction of (South Australia) . . . . .	129
Antigua, Legislation of . . . . .	241-242

# INDEX TO REVIEW OF LEGISLATION.

249

	PAGE
Antiquities : archivist, appointment of (Dominion of Canada) . . . . .	200
———— search for, regulation of (Egypt) . . . . .	49
Appeal. <i>See</i> Judicature.	
Apprenticeship (Papua) . . . . .	154
Arbitration (Federated Malay States) . . . . .	87
———— industrial (New South Wales) . . . . .	106-108
———— system of (Papua) . . . . .	157
Archives, Canada, of, appointment of archivist (Dominion of Canada) . . . . .	200
Army. <i>And see</i> Defence.	
———— age and stature of recruits (Russia) . . . . .	58
———— deserters (U.K.) . . . . .	66
———— enlistment, term of (U.S.A.) . . . . .	62
———— Jews, liability of (Russia) . . . . .	59-60
———— King's African Rifles (East Africa) . . . . .	194
———— national defence. <i>See</i> Defence.	
———— pensions (Dominion of New Zealand) . . . . .	166
———— (U.S.A.) . . . . .	62
Attorney, powers of, verification (Federated Malay States) . . . . .	90
Auctioneers, licensing of (East Africa) . . . . .	194
———— (Saskatchewan) . . . . .	221
Audit : accounts of (Bahamas) . . . . .	225-226
———— (Mauritius) . . . . .	91
———— (Prince Edward Island) . . . . .	216-217
———— quasi-public accounts (New South Wales) . . . . .	109-110
Australia, Commonwealth of, Legislation of . . . . .	95-104
Aviation, regulation of (Ceylon) . . . . .	78
———— (Hong Kong) . . . . .	81
BAHAMAS, Legislation of . . . . .	224-227
Bail, admission to (France) . . . . .	53
Bankruptcy : consolidation of law (Papua) . . . . .	157
———— system of (Federated Malay States) . . . . .	87-88
Banks : agricultural (Western Australia) . . . . .	151
———— forged endorsements, protection against (U.S.A.) . . . . .	64
———— land (Union of South Africa) . . . . .	170-171
———— note circulation, expanding (Dominion of Canada) . . . . .	200
———— saving banks. <i>See</i> Savings Banks.	
———— statement of affairs by the Minister of Finance (Newfound- land) . . . . .	221
———— taxation of. <i>See</i> Taxation.	
———— unclaimed balances (Jamaica) . . . . .	232
Bar. <i>See</i> Legal Profession.	
Barbados, Legislation of . . . . .	228-230
Bees, importation (St. Lucia) . . . . .	239
Benevolent funds, planters, for (Federated Malay States) . . . . .	90
Bengal, Legislation of . . . . .	74
Betting. <i>See</i> Gaming and Wagering.	
Billiard or pool rooms, regulation of (Alberta) . . . . .	202

	PAGE
Bills of sale (Papua) . . . . .	157
Birds: protection of (Egypt) . . . . .	50
——— wild (Antigua) . . . . .	241
——— (British India) . . . . .	71-72
——— (Turk's and Caicos Islands) . . . . .	233
Births, deaths and marriages, notification of (Egypt) . . . . .	50
——— registration of (Bahamas) . . . . .	225
——— (Barbados) . . . . .	230
——— (Dominion of New Zealand) . . . . .	161
——— (Gold Coast) . . . . .	186
——— (Manitoba) . . . . .	207
——— (Papua) . . . . .	157
——— (Victoria) . . . . .	144
Boatmen, service of (Montserrat) . . . . .	242
Boilers, inspection of (Alberta) . . . . .	202
——— (Newfoundland) . . . . .	222
Bombay, Legislation of . . . . .	73-74
Boundaries of provinces (Dominion of Canada) . . . . .	200
Boycotting, punishment for (Hong Kong) . . . . .	82
Bread, ingredients of (Papua) . . . . .	156
——— sale of (St. Helena) . . . . .	199
Bridges, traffic on (Alberta) . . . . .	201
British Columbia, Legislation of . . . . .	203-204
British Empire, Legislation of . . . . .	66
British Honduras, Legislation of . . . . .	230-231
British India, Legislation of . . . . .	70-76
Building: compulsory acquisition of land for (Newfoundland) . . . . .	223
——— construction of (New Brunswick) . . . . .	209
——— leases, extension of (Russia) . . . . .	61
——— line (Southern Nigeria) . . . . .	192
——— public, egress from (Alberta) . . . . .	203
——— scaffolding and mode of erection (Manitoba) . . . . .	204
——— (Saskatchewan) . . . . .	220
——— shade trees, planting (Nova Scotia) . . . . .	212
——— societies (British Honduras) . . . . .	231
——— tenement houses (Nova Scotia) . . . . .	212
——— town planning (New Brunswick) . . . . .	210
——— (Nova Scotia) . . . . .	212
——— (Trinidad and Tobago) . . . . .	233
Bureau of statistics (Quebec) . . . . .	218
Burma, Legislation of . . . . .	74
CALVES, slaughter of (Egypt) . . . . .	50
Canada, Dominion of, Legislation of . . . . .	199-224
Cape Colony, Legislation of . . . . .	180
Cattle: contagious diseases (Tasmania) . . . . .	136
——— purchasing from natives (Nyasaland) . . . . .	197
——— slaughtering (Papua) . . . . .	155

# INDEX TO REVIEW OF LEGISLATION.

251

PAGE

77-79

Ceylon, Legislation of . . . . .	
Chandu (opium for smoking), restriction on possession of (Federated Malay States). <i>See also</i> Drugs . . . . .	90
Charities, investment of charitable funds (South Australia) . . . . .	131
Chemist. <i>See</i> Drugs and Druggist.	
Children and young persons: billiard or pool rooms, not to be admitted to (Alberta) . . . . .	202
_____ bureau for matters affecting (U.S.A.) . . . . .	61
_____ Courts for (Nova Scotia) . . . . .	210
_____ custody and guardianship of (Papua) . . . . .	153
_____ _____ (Victoria) . . . . .	144
_____ death sentences on, not to be passed (Falkland Islands) . . . . .	198
_____ delinquent (Quebec) . . . . .	219
_____ reformatories for (Jamaica) . . . . .	232
_____ deserted (Papua) . . . . .	154
_____ evidence of, taking (Gibraltar) . . . . .	244
_____ factories, not to be employed in (New Brunswick) . . . . .	209
_____ _____ (U.S.A.) . . . . .	64
_____ illegitimate children, proceedings against putative father (Manitoba) . . . . .	205
_____ _____ (Saskatchewan) . . . . .	221
_____ industrial school for delinquent (Jamaica) . . . . .	232
_____ _____ (Quebec) . . . . .	219
_____ labour, hours limited to ten a day (U.S.A.) . . . . .	65
_____ night, forbidden (U.S.A.) . . . . .	65
_____ time limit (Nova Scotia) . . . . .	211
_____ maternity grant (Commonwealth of Australia) . . . . .	96
_____ paternity, recognition of (France) . . . . .	51-53
_____ pea rifles not to be sold to (Victoria) . . . . .	144
_____ surrender of, by parent under State sanction to be binding (Manitoba) . . . . .	204
_____ telegraph messengers, employment as (U.S.A.) . . . . .	64
_____ vagrant and neglected, care and maintenance of (Nova Scotia) . . . . .	210-212
Chinese, Japanese or Oriental restaurant, white women not to be employed in (Saskatchewan) . . . . .	220
Chinese marriages (Hong Kong) . . . . .	83
Churches and clergy: Anglican Church, Bishop of Singapore (Federated Malay States) . . . . .	88
_____ orthodox Copt community (Egypt) . . . . .	50
_____ Scotland, Church of (Mauritius) . . . . .	94
Cinematographs. <i>See</i> Public Entertainments.	
Coal mines. <i>And see</i> Mining.	
_____ "coal," definition of (East Africa) . . . . .	193

	PAGE
Coal mines: minimum wage (U.K.) . . . . .	66
——— State (New South Wales) . . . . .	109
Cocaine, illicit traffic in (British India) . . . . .	73-74
Coin. <i>See</i> Currency.	
Collective punishment (Southern Nigeria) . . . . .	190
Companies, consolidation of law (Mauritius) . . . . .	93
——— (Papua) . . . . .	155
——— (Southern Nigeria) . . . . .	190
——— foreign, registration of documents (Federated Malay States) . . . . .	88
——— (Nova Scotia) . . . . .	213-214
——— inspection of, by Government (Manitoba) . . . . .	204
——— shares in unlicensed, not to be sold or advertised (Manitoba) . . . . .	207
Compensation, workmen, to. <i>See</i> Labour.	
Constabulary. <i>See</i> Police.	
Constitution: amendments of (Commonwealth of Australia) . . . . .	95
——— referendum (Commonwealth of Australia) . . . . .	101-102
Contagious diseases, cattle, of (Tasmania) . . . . .	136
Conveyancing Acts (Gibraltar) . . . . .	244
Co-operative societies (British India) . . . . .	70
Copyright (Antigua) . . . . .	242
——— (Commonwealth of Australia) . . . . .	100
——— (Hong Kong) . . . . .	81
——— (Isle of Man) . . . . .	68
——— (Mauritius) . . . . .	91
——— (Newfoundland) . . . . .	222
——— (St. Christopher and Nevis) . . . . .	243
——— (St. Lucia) . . . . .	239
——— (Southern Rhodesia) . . . . .	183
——— (Turk's and Caicos Islands) . . . . .	233
Corrupt practices (Alberta) . . . . .	202
Cotton gambling, suppression of (British India) . . . . .	76
Courts. <i>See</i> Judicature.	
Cremation, regulations as to (Mauritius) . . . . .	92-93
Criminal law: abusing of girls, time limit for prosecution (Tasmania) . . . . .	134
——— aiding accused persons to escape (Egypt) . . . . .	46
——— appeal in criminal cases (New South Wales) . . . . .	105
——— (Western Australia) . . . . .	147, 148-149
——— bail, admission to (France) . . . . .	53
——— betting (Straits Settlements) . . . . .	84
——— boycotting, punishment of (Hong Kong) . . . . .	82
——— children, death sentence on, not to be passed (Barbados) . . . . .	230
——— (Falkland Islands) . . . . .	198
——— delinquents (Jamaica). <i>See also</i> Children . . . . .	219
——— (Quebec) . . . . .	232
——— collective punishment (Southern Nigeria) . . . . .	190
——— common gaming house, keeping (Federated Malay States) . . . . .	88
——— cruelty to animals (Papua) . . . . .	154
——— deportation, detention pending (Hong Kong) . . . . .	79-80



Criminal law : electricity, larceny of (Hong Kong) . . . . .	82
———— electrocution (U.S.A.) . . . . .	64
———— evidence of children, taking (Gibraltar) . . . . .	244
———— extradition of fugitive offenders (Federated Malay States) .	89-90
———— fire, negligent use of (British Honduras) . . . . .	231
———— gaming and wagering, prosecutions for (Papua) . . . . .	155
———— girl offenders, industrial homes for (British Columbia) . .	204
———— identification of criminals (Southern Rhodesia) . . . . .	184
———— indeterminate sentences (Western Australia) . . . . .	147
———— industrial schools, children, for (Barbados) . . . . .	229
———— ————— (Jamaica) . . . . .	232
———— ————— (Quebec) . . . . .	219
———— ————— girls, for (British Columbia) . . . . .	204
———— " joy rides," penalty for (Victoria) . . . . .	144
———— marriage, promise of, to native woman (Southern Rhodesia) .	184
———— murder societies (Sierra Leone) . . . . .	188
———— perjury, consolidation of law (Gibraltar) . . . . .	243-244
———— police offences (Papua) . . . . .	156-157
———— ————— (Victoria) . . . . .	144
———— poor prisoners' defence (Dominion of New Zealand) . . . .	160
———— preventive detention (Western Australia) . . . . .	147
———— procedure. <i>See</i> Judicature.	
———— revenue offences, arrest without warrant (Hong Kong) . .	82
———— riots (Bahamas) . . . . .	227
———— sale of offensive weapons without certificate (Manitoba) . .	206
———— seditious libel, trial without jury (Mauritius) . . . . .	92
———— serving term of imprisonment outside walls (Egypt) . . . .	46
———— usury (Egypt) . . . . .	46
———— vagrancy (Papua) . . . . .	156
———— white slave traffic, suppression of, international convention	
———— ————— for (France) . . . . .	51
———— ————— whipping (U.K.) . . . . .	66
———— witchcraft (Uganda) . . . . .	194
Crown : demise of, proclamation (Saskatchewan) . . . . .	220
———— lands (New South Wales) . . . . .	105
———— ————— (Queensland) . . . . .	111-112
———— ————— (South Australia) . . . . .	120-121
———— ————— (Union of South Africa) . . . . .	175-176
———— solicitors, appointment of (Hong Kong) . . . . .	82
Cruelty to animals. <i>See</i> Animals, protection.	
Currency : copper coinage, importation of (Hong Kong) . . . . .	80-81
———— counterfeit coin (Federated Malay States) . . . . .	88
Custom, quarrying, fees (Wei-hai-Wei) . . . . .	94
Customs. <i>See</i> Taxation.	
Cyprus, Legislation of . . . . .	245
DEATHS, notification of (Egypt) . . . . .	50
———— registration of (Bahamas) . . . . .	225

	PAGE
Deaths, registration of (Barbados) . . . . .	230
————— (Falkland Islands) . . . . .	198
————— (Gold Coast) . . . . .	186
————— (Manitoba) . . . . .	207
————— (Papua) . . . . .	157
————— (Victoria) . . . . .	144
Debentures, taxation of (Prince Edward Island) . . . . .	217
Deeds, registration of (Somaliland) . . . . .	195-196
————— simplification of (U.S.A.) . . . . .	64
Deer, close time for (Trinidad and Tobago) . . . . .	236
Defence: compulsory drills (Commonwealth of Australia). . . . .	100
————— service (Union of South Africa). . . . .	176-178
————— fines for default (Dominion of New Zealand) . . . . .	161-162
————— power to raise force for (Antigua). <i>And see Army</i> . . . . .	241
————— reserve force (Antigua) . . . . .	241
Delhi laws (British India) . . . . .	72
Dentists, registration of (Gold Coast) . . . . .	186
Deportation, detention of persons pending (Hong Kong) . . . . .	79-80
Deserted wives and children (Manitoba) . . . . .	207
————— (Papua) . . . . .	154
Destitute persons, interstate relief convention (Victoria) . . . . .	145
Distillation of spirits, prohibition (Gambia) . . . . .	185
————— (Gold Coast) . . . . .	186
————— (Papua) . . . . .	154
————— (Sierra Leone) . . . . .	188
————— (Southern Nigeria) . . . . .	192
Divorce. <i>See</i> Marriage.	
Doctors. <i>See</i> Medical Practitioner.	
Dogs: importation of (Trinidad and Tobago) . . . . .	236
————— licensing and control of (Nyasaland) . . . . .	196
————— tax on (Southern Rhodesia) . . . . .	184
————— wild, destruction of (South Australia) . . . . .	129
Dominica, Legislation of . . . . .	242
<i>Donationes inter vivos</i> , recording of (Mauritius) . . . . .	93
Drowned persons, recovery of bodies of (Manitoba) . . . . .	204-205
Drugs and druggist: certificate in pharmacy (Dominion of New Zealand) . . . . .	160
————— chandu (opium for smoking) restriction on pos- session of (Federated Malay States) . . . . .	90
————— cocaine, illicit traffic in (British India) . . . . .	73-74
————— competent dispenser required (Mauritius) . . . . .	92
————— importation of drugs (Newfoundland) . . . . .	221
————— licensing of druggists (Nyasaland) . . . . .	197
————— morphine, sale of (Federated Malay States) . . . . .	88
————— opium convention (Bahamas) . . . . .	227
————— (Grenada) . . . . .	237-238
————— (St. Vincent) . . . . .	240
————— traffic (Trinidad and Tobago) . . . . .	237

	PAGE
Drugs and druggist: purity of (Papua) . . . . .	156
————— sale of, restricted to licensed persons (Bahamas) . . . . .	327
EARLY closing of shops (Alberta) . . . . .	202
————— (South Australia) . . . . .	129
————— (Western Australia) . . . . .	149
East Central Africa, Legislation of . . . . .	193-197
Eastern Bengal and Assam, Legislation of . . . . .	74
Eastern Colonies, Legislation of . . . . .	77-94
Education: bursaries, establishment of (New South Wales) . . . . .	114
————— compulsory, extension of (Tasmania) . . . . .	132-133
————— elementary (Jersey) . . . . .	68-69
————— language in schools (Cape Colony) . . . . .	180
————— (Orange Free State) . . . . .	181-182
————— military drill (Dominion of New Zealand) . . . . .	166
————— schools: language in (Cape Colony) . . . . .	180
————— (Orange Free State) . . . . .	181-182
————— native, control of (Southern Rhodesia) . . . . .	184
————— pension fund (Newfoundland) . . . . .	222
————— (Trinidad and Tobago) . . . . .	236
————— teachers, superannuation of (Dominion of New Zealand) . . . . .	167
————— training college for (New South Wales) . . . . .	105
————— technical school of agriculture (Egypt) . . . . .	50
Egypt, Legislation of . . . . .	45-50
Elections: corrupt practices (Alberta) . . . . .	202
————— representation in Legislature (New Brunswick) . . . . .	208
————— voters, qualification of (Southern Rhodesia) . . . . .	184
————— registration of (Mauritius) . . . . .	91
————— (Newfoundland) . . . . .	222
Electricity, larceny of (Hong Kong) . . . . .	82
Elephant kraals, regulation of (Ceylon) . . . . .	77
Employers' liability (Papua). <i>See also</i> Labour . . . . .	156
Employment agencies, licence for (British Columbia) . . . . .	203-204
Entertainments. <i>See</i> Public Entertainments.	
Eugenics: common drinking cups, prohibition of (U.S.A.) . . . . .	63-64
————— marriage regulations (U.S.A.) . . . . .	64
————— maternity grant (Commonwealth of Australia) . . . . .	96
————— segregation of blacks and whites (U.S.A.) . . . . .	65
Evidence of children (Gibraltar) . . . . .	244
Excise. <i>See</i> Taxation.	
Executor, renunciation (Victoria) . . . . .	142
Executor and administrator: widow of intestate farmer may carry on farm (Manitoba) . . . . .	207
Explosives (Northern Nigeria) . . . . .	190
————— post, not to be sent by (British Honduras) . . . . .	231
————— sand crackers, prohibition of (Straits Settlements) . . . . .	84
Extradition (Federated Malay States) . . . . .	89

	PAGE
Factories : no child to be employed in (New Brunswick) . . . . .	209
— shops, and, consolidation of law (Victoria) . . . . .	146
Factors (Papua) . . . . .	156
Falkland Islands, Legislation of . . . . .	197-198
Family of testator, provision for maintenance (Tasmania) . . . . .	132
Federated Malay States, Legislation of . . . . .	87-91
Federation agreements and treaties, execution of (Federated Malay States) . . . . .	90-91
Fencing land (Papua) . . . . .	155
— (Union of South Africa) . . . . .	170
Fertilisers, sale of (Tasmania) . . . . .	135-136
Fiji, Legislation of . . . . .	168-169
Finance : audit of accounts (Mauritius) . . . . .	91
— (Prince Edward Island) . . . . .	216-217
— quasi-public accounts (New South Wales) . . . . .	109-110
— supply (Antigua) . . . . .	242
— (Australia, Commonwealth of) . . . . .	96-97
— (Dominion of New Zealand) . . . . .	164
— (Egypt) . . . . .	45
— (Falkland Islands) . . . . .	198
— (Leeward Islands) . . . . .	241
— (Montserrat) . . . . .	242
— (Newfoundland) . . . . .	223-224
— (Nyasaland) . . . . .	196
— (Papua) . . . . .	158
— (Queensland) . . . . .	110-111
— (St. Christopher and Nevis) . . . . .	243
— (St. Helena) . . . . .	199
— (South Australia) . . . . .	120
— (Union of South Africa) . . . . .	170
— (U.K.) . . . . .	66-67
Fire : regulations and precautions (British Honduras) . . . . .	231
— (Papua) . . . . .	154
— (Quebec) . . . . .	219
— (Saskatchewan) . . . . .	220
— State insurance (Dominion of New Zealand). <i>See</i> Insurance	166
Fisheries : deep sea (Barbados) . . . . .	228
— licences for fishing (Victoria) . . . . .	138
— marine and freshwater, biological board (Dominion of Canada)	200
— pollution of streams, prevention of (Natal) . . . . .	181
— right of fishing by residents (Nova Scotia) . . . . .	214-215
— seals, international convention (U.K.) . . . . .	67
— whales (Falkland Islands) . . . . .	198
— (St. Helena) . . . . .	199
Floods, protection against (Victoria) . . . . .	137
Food : adulteration (Isle of Man) . . . . .	68
— bread, sale of (St. Helena) . . . . .	199
— purity of (Papua) . . . . .	156

# INDEX TO REVIEW OF LEGISLATION.

257

PAGE

Food : threatened shortage of native foodstuffs (Nyasaland) . . .	196
Foreign unlicensed companies, shares in, not to be sold or advertised (Manitoba) . . . . .	207
Foreshore, reclamation (Straits Settlements) . . . . .	84-85
France, Legislation of . . . . .	50-53
Friendly societies (Queensland) . . . . .	114
_____ (South Australia) . . . . .	129
Fur-bearing animals, protection of (Quebec) . . . . .	219
Fruit cases (New South Wales) . . . . .	105
_____ (Queensland) . . . . .	115
,	
GAMBIA, Legislation of . . . . .	185
Game protection (Natal) . . . . .	180-181
_____ (Nova Scotia) . . . . .	215
_____ (Somaliland) . . . . .	195
_____ restrictions on killing (Victoria) . . . . .	138
Games and sports : racecourses, licensing of (British India) . . . . .	73
Gaming and wagering : amendment of law (Hong Kong) . . . . .	83
_____ " common betting house " (Federated Malay States) . . . . .	88
_____ (Straits Settlements) . . . . .	84
_____ cotton gambling, suppression of (British India) . . . . .	76
_____ lotteries, advertisement of, prohibited (Sierra Leone) . . . . .	188
_____ (Southern Nigeria) . . . . .	190
_____ prosecutions for (Papua) . . . . .	155
_____ totalisator at clubs (Western Australia) . . . . .	152
Garden suburbs (New South Wales) . . . . .	105
Gas companies, powers of (New South Wales) . . . . .	105
General Assembly, rights of (Barbados) . . . . .	228
Geological survey (Barbados) . . . . .	228
Germany, Legislation of . . . . .	53-56
Gibraltar, Legislation of . . . . .	243-244
Gifts, recording of (Mauritius) . . . . .	93
Girls. <i>See</i> Women and Girls.	
Government. <i>And see</i> State.	
_____ commission form of (U.S.A) . . . . .	63
_____ " disturbed districts " (Southern Nigeria) . . . . .	190-191
_____ Governor, Deputy Governor, powers of (Tasmania) . . . . .	134-135
_____ India, of (U.K.) . . . . .	67
_____ legislative assembly. <i>See</i> Parliament.	
_____ legislative council (Egypt) . . . . .	47
_____ local government. <i>See</i> Local Government.	
_____ local loans for emergencies (British India) . . . . .	72
_____ official secrets (East Africa) . . . . .	194
_____ (Uganda) . . . . .	194
_____ (Wei-hai-Wei) . . . . .	94
_____ Premier, salary (Prince Edward Island) . . . . .	216

	PAGE
Government: referendum, adoption of (U.S.A.) . . . . .	63
———— securities, debentures (Victoria) . . . . .	146
———— Territory for the Seat of . . . . .	158
———— “unsettled districts” (Southern Nigeria) . . . . .	190-191
Grain, storage and transport of (Dominion of Canada) . . . . .	199-200
Grenada, Legislation of . . . . .	237-238
Guernsey, Legislation of . . . . .	69
 HAILSTORM, insurance of crops against (Alberta) . . . . .	202
———— municipalities, by (Saskatchewan) . . . . .	220-221
Harbour. <i>See</i> Ports and Harbours.	
Hawkers, licence for (Saskatchewan) . . . . .	221
———— travelling by river (South Australia) . . . . .	130-131
Health. <i>See</i> Public Health.	
Highways. <i>See</i> Roads.	
Holidays. <i>See</i> Public Holidays.	
Homesteads, protection of (Egypt) . . . . .	49
Hong Kong, Legislation of . . . . .	79-83
Horse breeding, stallions (Papua) . . . . .	157
———— (Saskatchewan) . . . . .	221
Horse racing, licensing of racecourses (British India) . . . . .	73
Hospitals, appointments and dismissals (South Australia) . . . . .	131
———— boards for (Cape Colony) . . . . .	180
———— protection of (Prince Edward Island) . . . . .	217
Hotel, State-established (Western Australia) . . . . .	147
———— (Bahamas) . . . . .	226
Housing: garden suburb (New South Wales) . . . . .	105-106
———— tenement houses (Nova Scotia) . . . . .	212
———— workers' homes (Western Australia) . . . . .	151
Human Leopard Society, suppression of (Sierra Leone) . . . . .	188
Husband and wife: deserted wives (Papua) . . . . .	154
———— divorce. <i>See</i> Marriage.	
———— law governing rights and duties of (Germany) . . . . .	54
———— marriage. <i>See</i> Marriage.	
———— separate property of wife (Papua) . . . . .	155-156
———— torts of wife (South Australia) . . . . .	129
Hut tax (Nyasaland) . . . . .	197
 ILLEGITIMATE children, proceedings against putative father (Manitoba) . . . . .	205
———— (Saskatchewan) . . . . .	221
Illiterate, writing for, restrictions on (Gold Coast) . . . . .	186
Immigration. aliens, deportation (St. Vincent) . . . . .	239
———— (Trinidad and Tobago) . . . . .	234
———— fees (Trinidad and Tobago) . . . . .	237
———— fund in aid (Trinidad and Tobago) . . . . .	237
———— indentured Indian immigrants (Fiji) . . . . .	168
———— medical examination of immigrants (Commonwealth of Australia) . . . . .	103-104

Income tax. *See* Taxation.

Indecent literature, power of Post Office to open (British India) . . . 70

Indeterminate sentences (Western Australia) . . . 147

India, government of (U.K.) . . . 67

———— re-distribution of territories (British India) . . . 70

———— Delhi lands (British India) . . . 72

Industrial homes for girl offenders (British Columbia) . . . 204

———— schools (Barbados) . . . 229

———— (Quebec) . . . 219

Industry and commerce: commission on industrial relations (U.S.A.) 62-63

———— co-operative societies (British India) . . . 70

———— copyright. *See* Copyright.

———— cotton gambling, suppression of (British India) . . . 76

———— factors (Papua) . . . 156

———— fruit cases (New South Wales) . . . 105

———— industrial arbitration (New South Wales) . . . 106

———— Courts (Queensland) . . . 112-114

———— (South Australia) . . . 123-128

———— interstate commission on (Commonwealth of Australia) . . . 97

———— liens, registration of (Papua) . . . 156

———— patents. *See* Patents.

———— reciprocity tariff agreement (Barbados) . . . 229-230

———— State coal mines (New South Wales) . . . 109

———— State trading, finance of (New South Wales) . . . 109

———— sugar trade (Barbados) . . . 228

———— trade: coupons (Queensland) . . . 112

———— marks. *See* Trade Marks.

———— spirits, importation of (Sierra Leone) . . . 188

———— trading licence (Uganda) . . . 195

Infants. *See* Children and Young Persons.

Infectious disease, notification of (Jamaica) . . . 232

Insanity. *See* Lunacy.

Innkeeper, right of sale to enforce lien (Hong Kong) . . . 82

Insolvency. *See* Bankruptcy.

Insurance: business, licence to carry on (Manitoba) . . . 205

———— fire: companies, official inspection (Saskatchewan) . . . 220

———— State, insurance (Dominion of New Zealand) . . . 166

———— hailstorm, of crops against (Alberta) . . . 202

———— municipalities, by (Saskatchewan) 220-221

———— life assurance societies (British India) . . . 70

———— policies on life, protection of (Papua) . . . 156

———— provident insurance societies (British India) . . . 70-71

———— workmen, of, against sickness or accident (Russia) . . . 60-61

Interdiction, principles of (Germany) . . . 55-56

International law: convention, Franco-German, as to equatorial

———— Africa (France) . . . 50

———— motor vehicles, convention (British India) . . . 72

	PAGE
International law: white slave traffic, international convention for suppression of (France) . . . . .	51
Interpretation of statutes and written law (Cyprus) . . . . .	245-246
_____ (Straits Settlements) . . . . .	84
_____ (Trinidad and Tobago) . . . . .	234-236
Intestates' widows, provision for (Gibraltar) . . . . .	243
Intoxicating liquors: "blacklisting" inebriates (Falkland Islands) . . . . .	198
_____ codification of law (Queensland) . . . . .	115-117
_____ distillation of spirits, prohibition (Gambia) . . . . .	185
_____ (Gold Coast) . . . . .	186
_____ (Papua) . . . . .	154
_____ (Sierra Leone) . . . . .	188
_____ (Southern Nigeria) . . . . .	192
_____ licences (Alberta) . . . . .	202
_____ (Bahamas) . . . . .	227
_____ (Barbados) . . . . .	229
_____ (Manitoba) . . . . .	205
_____ (New Brunswick) . . . . .	208
_____ licensing districts (Victoria) . . . . .	143-144
_____ local option (Queensland) . . . . .	117-119
_____ prohibited areas (Southern Nigeria) . . . . .	191-192
_____ railway refreshment rooms (Queensland) . . . . .	119
_____ sale under licence (Southern Rhodesia) . . . . .	183-184
_____ spirit merchants' licences (Victoria) . . . . .	143
Introduction to Review of Legislation . . . . .	42-44
Irrigation (New South Wales) . . . . .	108
_____ (Union of South Africa) . . . . .	178-180
Isle of Man, Legislation of . . . . .	68
JAMAICA, Legislation of . . . . .	231-233
Jersey, Legislation of . . . . .	68-69
Jews, military service, liability to (Russia) . . . . .	59-60
"Joy-rides," penalty for (Victoria) . . . . .	144
Judicature: administration of justice, uniformity (Union of South Africa) . . . . .	172-173
_____ appeal, criminal cases, in (New South Wales) . . . . .	105
_____ (Western Australia) . . . . .	147, 148-149
_____ matrimonial cases in (Western Australia) . . . . .	149
_____ Courts: cantonal (Egypt) . . . . .	47-48
_____ criminal (Egypt) . . . . .	47
_____ fees of justices (Papua) . . . . .	156
_____ full Court (Hong Kong) . . . . .	81-82
_____ judiciary, increase of (Commonwealth of Australia) . . . . .	104
_____ Justices of the Peace (Papua) . . . . .	155
_____ magistrates (Grenada) . . . . .	238
_____ mixed tribunals (Egypt) . . . . .	45
_____ native (Egypt) . . . . .	46
_____ advocates in, qualifications of (Egypt) . . . . .	48



	PAGE
Judicature: Courts: one-judge Courts (Mauritius) . . . . .	93
_____ panchayats or popular Courts (Punjab) . . . . .	75
_____ peasants' (Russia) . . . . .	58
_____ re-organisation of local (Russia) . . . . .	56-58
_____ "riot" magistrates (Mauritius) . . . . .	92
_____ salaries of judges (Union of South Africa) . . . . .	170
_____ "small cause Courts" (British India) . . . . .	71-72
_____ small debts Courts (Papua) . . . . .	153-154
_____ Supreme Court and Circuit Courts (New South Wales) . . . . .	109
_____ reconstitution of (Sierra Leone) . . . . .	188-189
_____ judgments, extension (Nyasaland) . . . . .	196
_____ juries, special (Southern Rhodesia) . . . . .	184
_____ letters of request (Barbados) . . . . .	228
_____ native stipendiary magistrates, from (Fiji) . . . . .	168
_____ oaths (Papua) . . . . .	156
_____ (Trinidad and Tobago) . . . . .	233
_____ commissioners to administer (Leeward Islands) . . . . .	241
_____ poor prisoners' defence (Dominion of New Zealand) . . . . .	160
_____ procedure: civil (Commonwealth of Australia) . . . . .	104
_____ (Egypt) . . . . .	47
_____ local Courts in (Western Australia) . . . . .	149-150
_____ service (Victoria) . . . . .	144-145
_____ out of jurisdiction (Sierra Leone) . . . . .	187
_____ (Cyprus) . . . . .	245
_____ summons (Union of South Africa) . . . . .	172-173
_____ criminal (Egypt) . . . . .	47
_____ (Russia) . . . . .	57
_____ magistrates' summary procedure (Tas- mania) . . . . .	136
_____ seditious libel, trial without jury (Mauritius) . . . . .	92
_____ separation of assessors during capital trial (Seychelles) . . . . .	94
Judicial separation, power to order (Seychelles) . . . . .	94
Juries, special (Southern Rhodesia) . . . . .	184
Justices of the Peace, powers and duties (Papua) . . . . .	155
KING's African Rifles (East Africa) . . . . .	194
_____ (Uganda) . . . . .	194
LABOUR: accident, insurance of workmen against (Russia) . . . . .	60
_____ building, protection of employees (Manitoba) . . . . .	204
_____ (Saskatchewan). See Building . . . . .	220
_____ child labour (Nova Scotia) . . . . .	211
_____ (U.S.A.) . . . . .	64-65
_____ commission on industrial relations (U.S.A.) . . . . .	62-63

	PAGE
Labour : consolidation of law (Federated Malay States) . . . . .	90
— employers' liability (Papua) . . . . .	156
— employment agencies, licence for (British Columbia) . . . . .	203-204
— factories, girls under twelve not to be employed in (U.S.A.) . . . . .	64
— hours for females under twenty-one limited to ten hours a day (U.S.A.) . . . . .	64
— Indian immigrants (Fiji) . . . . .	168
— labourers' diseases, provision for (Ceylon) . . . . .	78
— miners' phthisis (Union of South Africa) . . . . .	173-174
— native (Papua) . . . . .	157-158
— — compensation for mining accidents (Southern Rhodesia) . . . . .	184
— night, for children (U S A.) . . . . .	64-65
— — for women (Northern Nigeria) . . . . .	190
— — (Trinidad and Tobago) . . . . .	234
— shops, consolidation of law (U.K.). <i>See</i> Shops . . . . .	67
— sickness, provision for workmen in (Russia) . . . . .	60-61
— tea gardens, inspection of (Eastern Bengal and Assam) . . . . .	74
— "tipping" of employees forbidden (U.S.A.) . . . . .	65
— women, night work for (Northern Nigeria) . . . . .	190
— workmen's compensation (Commonwealth of Australia) . . . . .	102-103
— — (New Brunswick) . . . . .	209
— — homes (Western Australia) . . . . .	151
Land : agents, licensing of (Dominion of New Zealand) . . . . .	166
— allotments (Dominion of New Zealand) . . . . .	164-166
— bank (Union of South Africa) . . . . .	170
— building : leases, extension of (Russia) . . . . .	61
— — line (Southern Nigeria) . . . . .	192
— canal colonies, regulation of (Punjab) . . . . .	75
— compulsory acquisition of (Bahamas) . . . . .	226
— — (Newfoundland) . . . . .	223
— Conveyancing Acts (Gibraltar) . . . . .	244
— — (Victoria) . . . . .	142
— closer settlement, provisions for (New South Wales) . . . . .	105
— — (Victoria) . . . . .	138
— Crown lands. <i>See</i> Crown Lands.	
— deeds, simplification of (U.S.A.) . . . . .	64
— farm lands, settlement on (Nova Scotia) . . . . .	212-213
— fencing (Papua) . . . . .	155
— homesteads, protection of (Egypt) . . . . .	49
— improvements, inspection (Papua) . . . . .	157
— irrigation. <i>See</i> Irrigation.	
— native, amendment (Dominion of New Zealand) . . . . .	165
— peasant proprietors, bettering condition of (Egypt) . . . . .	49
— reserves on sale of private property (Victoria) . . . . .	142
— settlements (Union of South Africa) . . . . .	170
— small holdings (France) . . . . .	50-51
— survey marks (Southern Nigeria) . . . . .	191

	PAGE
Land: survey powers for (Alberta) . . . . .	202
———— surveyors, qualification of (Nyasaland) . . . . .	196
———— tenure (British India) . . . . .	73
———— transfer (Gibraltar) . . . . .	243
———— vacant estates, commission of curator of (Mauritius) . . . . .	93
———— women, inheritance of (Russia) . . . . .	60
Landlord and tenant: summary recovery of small premises (Jamaica)	232
Leeward Islands, Legislation of . . . . .	240-243
Legal profession: advocates, native Courts in (Egypt) . . . . .	48
———— law officers (Jamaica) . . . . .	232
———— (Leeward Islands) . . . . .	240
———— (Trinidad and Tobago) . . . . .	234
———— “ person ” to include female (Manitoba) . . . . .	205
———— solicitors, admission of (Trinidad and Tobago) . . . . .	234
———— women, admission of, to (British Columbia) . . . . .	204
Legislation, British Empire, of . . . . .	66-246
———— Foreign . . . . .	45-65
———— Index to . . . . .	247-275
———— Introduction to . . . . .	42-44
———— Review of . . . . .	45-246
Legislative Assembly. <i>See</i> Parliament.	
Legislative Council (Egypt) . . . . .	47
Lepers, protection of property of (Ceylon) . . . . .	78
Letters of request (Barbados) . . . . .	228
Licence: auctioneers, for (East Africa) . . . . .	194
———— (Saskatchewan) . . . . .	221
———— aviation, for (Hong Kong) . . . . .	81
———— cinematographs. <i>See</i> Public Entertainments.	
———— dogs, for (Nyasaland) . . . . .	196
———— druggists, for (Nyasaland) . . . . .	197
———— drugs, for sale of (Bahamas) . . . . .	327
———— employment agencies, for (British Columbia) . . . . .	203
———— fishing, for (Victoria) . . . . .	138
———— game (Somaliland) . . . . .	195
———— hawkers (Saskatchewan) . . . . .	221
———— travelling by water, for (South Australia) . . . . .	130
———— intoxicating liquors, for sale of. <i>See</i> Intoxicating Liquors.	
———— land agents, for (Dominion of New Zealand) . . . . .	166
———— offensive weapons, for sale of (Manitoba) . . . . .	206
———— (Saskatchewan) . . . . .	220
———— petroleum, for importation of (Barbados) . . . . .	229
———— public performances, for (Ceylon) . . . . .	77-78
———— (Straits Settlements) . . . . .	87
———— racecourses, for (British India) . . . . .	73
———— spirit merchants (Victoria) . . . . .	143
———— stallions, for (Papua) . . . . .	157
———— (Saskatchewan) . . . . .	221
———— totalisator <sup>at</sup> clubs, for (Western Australia) . . . . .	152

	PAGE
Licence: trading, for (Uganda) . . . . .	195
— vehicles, for (Hong Kong) . . . . .	82
— (Uganda) . . . . .	195
Lien, registration of, time for (Papua) . . . . .	156
— threshing machine repairs, for (Manitoba) . . . . .	207
Life boats (St. Vincent) . . . . .	239
Life insurance. <i>See</i> Insurance, Life.	
Local government: local authorities, powers of (Queensland) . . . . .	112
— municipality. <i>See</i> Municipality.	
— rates, committee to prepare list (Gambia) . . . . .	185
— powers as to levying (Transvaal) . . . . .	183
— system of (Transvaal) . . . . .	183
— towns, incorporation of (Alberta) . . . . .	200-201
— townships (Nyasaland) . . . . .	196
— loans: emergencies, for (British India) . . . . .	72
— roads, drainage, etc., for (Dominion of New Zealand) . . . . .	167
London Institution, purchase of, by Government (U.K.) . . . . .	67
Lotteries, advertisement of, prohibited (Sierra Leone) . . . . .	188
— (Southern Nigeria) . . . . .	190
Luccadive Islands, administration of (British India) . . . . .	76
Lunacy: amendment of law (Papua) . . . . .	153
— consolidation of law (British India) . . . . .	70
— estate of lunatic (Manitoba) . . . . .	205
MADRAS, Legislation of . . . . .	72
Magistrates. <i>See</i> Judicature.	
Maintenance: deserted wife or children (Manitoba) . . . . .	207
— testator's family, of (Tasmania) . . . . .	132
Malta, Legislation of . . . . .	245
Manitoba, Legislation of . . . . .	204-207
— Province, extension of . . . . .	204
Marriage: Chinese marriages (Hong Kong) . . . . .	83
— Christian native (Nyasaland) . . . . .	197
— contract (Germany) . . . . .	54-55
— deceased wife's sister (Leeward Islands) . . . . .	240
— (St. Lucia) . . . . .	238
— detention in lunatic asylum (Dominion of New Zealand) . . . . .	162
— divorce (British India) . . . . .	72
— grounds for (Western Australia) . . . . .	150-151
— native (Fiji) . . . . .	168
— re-marriage after (Dominion of New Zealand) . . . . .	162
— eugenic regulations (U.S.A.) . . . . .	63-64
— Hindoo and Mahomedan, appointment of priests to cele- brate (Mauritius) . . . . .	93
— judicial separation, power to order (Seychelles) . . . . .	94
— matrimonial régime (Germany) . . . . .	55
— native woman, promise or pledge of, to (Southern Rhodesia) . . . . .	185
— registration of (Bahamas) . . . . .	225

	PAGE
Marriage: registration of (Barbados) . . . . .	230
————— (Dominion of New Zealand) . . . . .	161
————— (Gold Coast) . . . . .	186
————— (Manitoba) . . . . .	207
————— (Papua) . . . . .	157
————— (Victoria) . . . . .	144
————— validation of (U.K.) . . . . .	67
————— validity of (U.S.A) . . . . .	64
Married woman. <i>See</i> Husband and Wife.	
Maternity grant (Commonwealth of Australia) . . . . .	96
Mauritius, Legislation of . . . . .	91-94
Medical practitioner: registration of (British India) . . . . .	73
————— (Gold Coast) . . . . .	186
Mining: accidents to natives, compensation for (Southern Rhodesia) . . . . .	184
————— aids to (Tasmania) . . . . .	135, 136
————— Department of (East Africa) . . . . .	193
————— leases (Victoria) . . . . .	137
————— miners' phthisis (Union of South Africa) . . . . .	173-174
————— oil (Trinidad and Tobago) . . . . .	234
————— settlements (British India) . . . . .	74
————— winding licences (Queensland) . . . . .	111
Mixed tribunals (Egypt) . . . . .	45-46
Money-lenders (Bahamas) . . . . .	227
————— (Mauritius) . . . . .	92
————— (Southern Nigeria) . . . . .	192
————— (Trinidad and Tobago) . . . . .	233
Montserrat, Legislation of . . . . .	242
Motors: damage, presumption of negligence (Alberta) . . . . .	201
————— fee on registration (Bahamas) . . . . .	225
————— international convention for travelling (British India) . . . . .	72
————— "joy-rides" in borrowed, penalty for (Victoria) . . . . .	144
————— liveryes, power of municipalities to license (Manitoba) . . . . .	205
————— racing on public highway (Alberta) . . . . .	201-202
————— regulation of (Alberta) . . . . .	201-202
————— (Saskatchewan) . . . . .	221
————— (Quebec) . . . . .	218
————— (Trinidad and Tobago) . . . . .	236
————— and traction engines (Federated Malay States) . . . . .	90
Moving pictures. <i>See</i> Public Entertainments.	
Municipalities: election of councillors (Orange Free State) . . . . .	180
————— funds of (Somaliland) . . . . .	195
————— powers of (South Australia) . . . . .	130
————— rural (Alberta) . . . . .	200-203
————— sanatoriums (Nova Scotia) . . . . .	214
NATAL, Legislation of . . . . .	180-181
Natives: box credit system for (Southern Rhodesia) . . . . .	184
————— compensation to, for mining accidents (Southern Rhodesia) . . . . .	184

	PAGE
Natives: Courts (Egypt) . . . . .	46
———— advocates in, qualification of (Egypt) . . . . .	49
———— delegation of matters to Native Minister (Union of S Africa) . . . . .	169
———— divorce (Fiji) . . . . .	168
———— foodstuffs, protection of (Nyasaland) . . . . .	196
———— government of, of proclaimed district (Nyasaland) . . . . .	197
———— hut tax (Nyasaland) . . . . .	197
———— labour of (Papua) . . . . .	157
———— land, amendment of law (Dominion of New Zealand) . . . . .	165
———— ———— commission (Fiji) . . . . .	168
———— marriage, Christian native (Nyasaland) . . . . .	197
———— ———— promise of, to native woman (Southern Rhodesia) . . . . .	185
———— native laws, sanction of (Western Pacific) . . . . .	169
———— purchasing cattle from (Nyasaland) . . . . .	197
———— reserves, Cape Barren Island (Tasmania) . . . . .	133-134
———— schools, control of (Southern Rhodesia) . . . . .	184
———— wages, priority (Papua) . . . . .	157
Negligence: motor, presumption from damage (Alberta) . . . . .	201-202
———— railway company, of, presumed from injury (U.S.A.) . . . . .	64
New Brunswick, Legislation of . . . . .	208-210
Newfoundland, Legislation of . . . . .	221-224
New South Wales, Legislation of . . . . .	104-110
New Zealand, Dominion of, Legislation of . . . . .	159-168
Nigeria, Northern, Legislation of . . . . .	189-190
Nigeria, Southern, Legislation of . . . . .	190-192
Notification of infectious diseases (Jamaica) . . . . .	232-233
Nova Scotia, Legislation of . . . . .	210-215
Noxious weeds, clearing (Grenada) . . . . .	237
Nuisance, smoke, from, reducing (British India) . . . . .	73
Nurses' pensions (Northern Nigeria) . . . . .	189
———— (Sierra Leone) . . . . .	187
———— (Southern Nigeria) . . . . .	190
Nyasaland, Legislation of . . . . .	196-197
OATHS (Papua) . . . . .	156
———— (Trinidad and Tobago) . . . . .	233
———— commissioners to administer (Leeward Islands) . . . . .	241
Offensive weapons, sale without licence (Manitoba) . . . . .	206
———— (Saskatchewan) . . . . .	220
Official secrets (East Africa) . . . . .	194
———— (Uganda) . . . . .	194
Official Trustees as guardians or administrators (Cyprus) . . . . .	246
Oil mining (Trinidad and Tobago) . . . . .	234
Old age and invalidity pensions (Commonwealth of Australia) . . . . .	97
Old metals, sale of (Malta) . . . . .	245
Ontario, Legislation of . . . . .	215
Opium. See Drugs.	
Orange Free State, Legislation of . . . . .	181-182

	PAGE
PAPUA, Legislation of . . . . .	152-158
Parliament: electoral divisions (Saskatchewan) . . . . .	219
——— payment of members (New South Wales) . . . . .	108-109
——— private bill procedure (Union of South Africa) . . . . .	172
——— senators, election of (New South Wales) . . . . .	109
Partnership: limited partnerships (Hong Kong) . . . . .	81
——— ———— (Papua) . . . . .	156
Passengers, registration of (Gold Coast) . . . . .	186
Patents: compulsory acquisition by the State (Russia) . . . . .	61
——— registration (Uganda) . . . . .	194
——— State patents, restoration (Queensland) . . . . .	115
Paternity: affiliation orders (Papua) . . . . .	154
——— judicial recognition of (France) . . . . .	51-53
——— proceedings against putative father (Manitoba) . . . . .	205
——— ———— (Saskatchewan) . . . . .	221
Pawnbrokers (Southern Nigeria) . . . . .	191
Peace preservation, "disturbed districts" (Southern Nigeria) . . . . .	190-191
——— "unsettled districts" (Southern Nigeria) . . . . .	190-191
Peasant Courts (Russia) . . . . .	57-58
——— proprietors, bettering position of (Egypt) . . . . .	49
Pensions: army (Dominion of New Zealand) . . . . .	166
——— (U.S.A.) . . . . .	62
——— nurses' (Northern Nigeria) . . . . .	189
——— (Sierra Leone) . . . . .	187
——— (Southern Nigeria) . . . . .	190
——— police (Trinidad and Tobago) . . . . .	234
——— public officers, of (Straits Settlements) . . . . .	85-86
——— public service (New South Wales) . . . . .	109
——— ———— (Union of South Africa) . . . . .	171-172
——— ———— superannuation fund (Queensland) . . . . .	115
——— school teachers' (Dominion of New Zealand) . . . . .	167
——— ———— (Trinidad and Tobago) . . . . .	236
——— widows and orphans' (Dominion of New Zealand) . . . . .	162
——— ———— (Mauritius) . . . . .	92
Perjury, consolidation of law (Gibraltar) . . . . .	243-244
Petroleum, importation of (Barbados) . . . . .	229
——— (Gibraltar) . . . . .	244
Pharmacy. <i>See</i> Drugs and Druggist.	
Phthisis, miners' (Union of South Africa) . . . . .	173-174
Pilots and pilotage. <i>See</i> Ships and Shipping.	
Planters' Benevolent Fund (Federated Malay States) . . . . .	90
Plant pests: eradication of (Uganda) . . . . .	194-195
——— exclusion of (British Honduras) . . . . .	231
——— ———— (Gold Coast) . . . . .	186
——— ———— (Nyasaland) . . . . .	197
Plants: diseased plants, power to destroy (Seychelles) . . . . .	94
——— weeds, noxious (Grenada) . . . . .	237
Plumbers, registration of (Dominion of New Zealand) . . . . .	166

	PAGE
Police code (Bahamas) . . . . .	226
————— (Malta) . . . . .	245
————— commissioners of (Queensland) . . . . .	119
————— half pay (Egypt) . . . . .	50
————— medals for bravery (Gold Coast) . . . . .	186
————— military, regulations for (Eastern Bengal and Assam) . . . . .	74-75
————— organisation of (Union of South Africa) . . . . .	170
————— pensions (Trinidad and Tobago) . . . . .	234
Policy, life, protection of (Papua) . . . . .	156
Pool or billiard rooms, regulation of (Alberta) . . . . .	202
Poor law, destitute persons, relief (Victoria) . . . . .	145
Poor prisoners' defence (Dominion of New Zealand) . . . . .	160
Ports and harbours boards of control (Straits Settlements) . . . . .	86-87
————— construction (Straits Settlements) . . . . .	84
————— Melbourne Harbour Trust (Victoria) . . . . .	141-142
————— Rangoon port (Burma) . . . . .	76
————— regulation of (Southern Nigeria) . . . . .	192
————— St. John's (Newfoundland) . . . . .	222-223
————— service (Union of South Africa) . . . . .	173
Post office establishment and regulation of (Gambia) . . . . .	185
————— explosives not to be sent by post (British Honduras) . . . . .	231
————— indecent literature, power to open packets (British India) . . . . .	70
————— parcel post, institution of (U.S.A.) . . . . .	62
————— rates (Egypt) . . . . .	50
————— penny postage (Papua) . . . . .	153
Pounds, establishment of (Orange Free State) . . . . .	182
————— sale of impounded animals (Victoria) . . . . .	138
Preventive detention (Western Australia) . . . . .	147
Prince Edward Island, Legislation of . . . . .	216-217
Prisons: management of (Barbados) . . . . .	230-231
————— photographing and measurement of prisoners (Dominion of New Zealand) . . . . .	159
————— serving term outside (South Australia) . . . . .	130-131
Private Bill procedure (Union of South Africa) . . . . .	172
Property, persons incapacitated from managing (Dominion of New Zealand) . . . . .	163-164
Public authorities, protection of (Trinidad and Tobago) . . . . .	236-237
————— (Straits Settlements) . . . . .	86
Public buildings, egress from (Alberta) . . . . .	202-203
Public entertainments: cinematographs and other shows, censorship of (Alberta) . . . . .	202-203
————— (Ceylon) . . . . .	77
————— (East Africa) . . . . .	193
————— (Falkland Islands) . . . . .	198
————— (Federated Malay States) . . . . .	90
————— (Fiji) . . . . .	169
————— (Gambia) . . . . .	185
————— (Gold Coast) . . . . .	186



Public entertainments : cinematographs and other shows, censorship of	
(Manitoba) . . . . .	206
(Mauritius) . . . . .	92
(New Brunswick) . . . . .	209
(Northern Nigeria) . . . . .	189
(Nyasaland) . . . . .	196
(Quebec) . . . . .	219
(St. Helena) . . . . .	199
(St. Lucia) . . . . .	238
(Seychelles) . . . . .	94
(Sierra Leone) . . . . .	187
(Somahland) . . . . .	195
(Southern Nigeria) . . . . .	192
(Southern Rhodesia) . . . . .	184
(Straits Settlements) . . . . .	87
(Trinidad and Tobago) . . . . .	233
(Uganda) . . . . .	194
Public health : adulteration of food (Isle of Man) . . . . .	68
Board of (Gambia) . . . . .	185
bread, ingredients of (Papua) . . . . .	156
consolidation of law (Barbados) . . . . .	230
(Papua) . . . . .	152-153
food, purity of (Papua) . . . . .	156
housing. <i>See</i> Housing.	
immigration, medical officer (Mauritius) . . . . .	91
infectious diseases, notification of (Egypt) . . . . .	50
labourers' diseases (Ceylon) . . . . .	78
lepers, property, protection of (Ceylon) . . . . .	78
miners' phthisis (Union of South Africa) . . . . .	173-175
mosquitoes, stored water to be protected from (Sierra Leone) . . . . .	187
notification of infectious diseases (Jamaica) . . . . .	232
nurses, pension of (Northern Nigeria) . . . . .	189
(Sierra Leone) . . . . .	187
(Southern Nigeria) . . . . .	190
public parks (Manitoba) . . . . .	206
quarantine, powers of Health Officer (Barbados) . . . . .	230
regulations for (Territory for the seat of Government, Australia) . . . . .	158
sanatoria, municipal (Nova Scotia) . . . . .	214
sanitary department (Sierra Leone) . . . . .	188
slaughtering sheep and cattle (Papua) . . . . .	155
tuberculosis, hospitals and sanatoria for (Newfoundland) . . . . .	221-222
vaccination (East Africa) . . . . .	293
white phosphorus matches prohibited (Southern Rhodesia) . . . . .	183
Public holidays : fixing (Hong Kong) . . . . .	79
(Queensland) . . . . .	112
Public loans (Dominion of New Zealand) . . . . .	167
(South Australia) . . . . .	122
(Trinidad and Tobago) . . . . .	234

	PAGE
Public meetings, disorderly conduct at (South Australia) . . . . .	130
Public parks (Manitoba) . . . . .	206
Public Records, Canada, appointment of archivist (Dominion of Canada)	200
Public service : control of (Dominion of New Zealand) . . . . .	162-163
— guarantee fund (St. Vincent) . . . . .	239
— offences by subordinates (Nyasaland) . . . . .	197
— organization (Union of South Africa) . . . . .	171-172
— re-classification (Victoria) . . . . .	146
— appeals (Western Australia) . . . . .	151
— superannuation fund (Queensland) . . . . .	115
— travelling allowances (Fiji) . . . . .	168
Public Trustee : need not give bond on administration (Barbados)	230
— office of (Dominion of New Zealand) . . . . .	160-161
— (Tasmania) . . . . .	136
Public utilities (Nova Scotia) . . . . .	215
— commissioner of (Manitoba) . . . . .	206-207
— steamship service (Bahamas) . . . . .	226
Public works (Queensland) . . . . .	119-120
Punishment, collective (Southern Nigeria) . . . . .	190
Punjab, Legislation of . . . . .	75
QUARANTINE, powers of Health Officer (Barbados) . . . . .	230
— regulations (Trinidad and Tobago) . . . . .	236
Quebec, Legislation of . . . . .	217-219
— New Quebec, annexation of (Quebec) . . . . .	217-218
Queensland, Legislation of . . . . .	110-120
RABBITS (Queensland) . . . . .	119
Racecourses, licensing of (British India) . . . . .	73
Radio-telegraphy, maintenance of station for (Bahamas) . . . . .	225
Railways . by-law making (Northern Nigeria) . . . . .	190
— company, negligence presumed from injury (U.S.A.) . . . . .	64
— consolidation of law (Federated Malay States) . . . . .	90
— construction agreement (Victoria) . . . . .	141
— Department of (Alberta) . . . . .	202
— deficiency rates (Victoria) . . . . .	141
— development of (Victoria) . . . . .	141
— light railways for agriculture (U.K.) . . . . .	67
— service of (Union of South Africa) . . . . .	173
— standing committee, appointment of (South Australia) . . . . .	122-123
— surplus revenue, accumulating (Victoria) . . . . .	141
Rates. <i>See</i> Local Government.	
Reciprocity tariff agreement (Barbados) . . . . .	229-230
Referendum : adoption of (U.S.A.) . . . . .	63
— amendment (Commonwealth of Australia) . . . . .	100-101
Registration : births, deaths, and marriages, of (Bahamas) . . . . .	225
— (Barbados) . . . . .	230
— (Dominion of New Zealand) . . . . .	161

	PAGE
Registration : births, deaths, and marriages, of (Falkland Islands) . . . . .	198
_____ (Gold Coast) . . . . .	186
_____ (Manitoba) . . . . .	207
_____ (Papua) . . . . .	157
_____ (Victoria) . . . . .	144
_____ doctors and dentists, of (Gold Coast) . . . . .	186
_____ documents, of (Somaliland) . . . . .	195-196
_____ passengers, of (Gold Coast) . . . . .	186
_____ plumbers, of (Dominion of New Zealand) . . . . .	166-167
_____ trade marks, of (East Africa) . . . . .	194
Reindeer, protection of (Falkland Islands) . . . . .	198
Revenue : officers, right to arrest without warrant (Hong Kong) . . . . .	82
_____ summary powers to recover (British Honduras) . . . . .	231
Rifles, pea and saloon guns, sale of, to persons under eighteen, pro- hibited (Victoria) . . . . .	144
Riots (Bahamas) . . . . .	227
Rivers, preventing pollution of (Natal) . . . . .	181
Roads : classification of (Transvaal) . . . . .	182-183
_____ country (Victoria) . . . . .	140-141
_____ dedication of (Barbados) . . . . .	228-229
_____ fund for improvement (Manitoba) . . . . .	205-207
_____ making of (Quebec) . . . . .	218-219
_____ (St. Christopher and Nevis) . . . . .	242-243
_____ (Saskatchewan) . . . . .	220
_____ " public " (Orange Free State) . . . . .	182
_____ traffic regulations (Alberta) . . . . .	201
_____ (Natal) . . . . .	
_____ carrying rights (St. Christopher and Nevis) . . . . .	242
Royal Commission (Commonwealth of Australia) . . . . .	102
Russia, Legislation of . . . . .	56-61
ST. CHRISTOPHER and Nevis, Legislation of . . . . .	242-243
St. Helena, Legislation of . . . . .	198
St. Lucia, Legislation of . . . . .	238-239
St. Vincent, Legislation of . . . . .	239-240
Sale of offensive weapons without licence (Manitoba) . . . . .	206
_____ (Saskatchewan) . . . . .	220
Sanatoria, municipal (Nova Scotia) . . . . .	214
_____ tuberculosis, for (Newfoundland) . . . . .	221-222
Sand crackers, prohibition of (Straits Settlements) . . . . .	84
Saskatchewan, Legislation of . . . . .	219-221
Savings banks : rate of interest (Egypt) . . . . .	50
_____ State savings bank (South Australia) . . . . .	129-130
Scotland, animals, protection of (U.K.) . . . . .	67-68
Seals, convention as to (U.K.) . . . . .	67
Seditious libel, trial of, without jury (Mauritius) . . . . .	92
Service of process. See Judicature.	
Seychelles, Legislation of . . . . .	94

	PAGE
"Shakerism," prohibition (St. Vincent) . . . . .	240
Shares in foreign unlicensed companies not to be sold or advertised (Manitoba) . . . . .	207
Ships and shipping: maritime convention of 1911 (Dominion of New Zealand) . . . . .	168
————— merchant shipping rules applicable to motor boats (Gibraltar) . . . . .	243
————— pilots and pilotage (Bahamas) . . . . .	225
————— seamen, foreign (Papua) . . . . .	156
————— repatriation of, discharged at foreign port (Seychelles) . . . . .	94
————— training ships for boys (Victoria) . . . . .	145
————— vessels in harbour, charges on (Guernsey) . . . . .	69
Shops: consolidation of law (U.K.) . . . . .	67
————— early closing (Alberta) . . . . .	202
————— (South Australia) . . . . .	129
————— (Western Australia) . . . . .	149
————— factories and, consolidation of law (Victoria) . . . . .	146
————— special closing times (Natal) . . . . .	181
————— weekly half holiday (Jamaica) . . . . .	232
Solicitors. <i>See</i> Legal Profession.	
Somaliland, Legislation of . . . . .	195-196
South Africa, Legislation of . . . . .	169-180
South Australia, Legislation of . . . . .	120-121
Southern Rhodesia, Legislation of . . . . .	183-185
Stallions: certificate (Saskatchewan) . . . . .	221
————— licensing of (Papua) . . . . .	157
Stamps. <i>See</i> Taxation.	
State: fire insurance (Dominion of New Zealand) . . . . .	166
————— hotel (Western Australia) . . . . .	147
————— loans. <i>See</i> Public Loans.	
————— undertakings. <i>See</i> Public Works.	
Statistics, Bureau of (Quebec) . . . . .	218
Statute law: compilation of Act and Amendments (Tasmania) . . . . .	132
————— interpretation (Cyprus) . . . . .	245-246
————— (Straits Settlements). . . . .	85
————— (Trinidad and Tobago) . . . . .	234
————— revision (Alberta) . . . . .	201
————— (Barbados) . . . . .	228
————— (Manitoba) . . . . .	207
————— (Prince Edward Island) . . . . .	216
Straits Settlement, Legislation of . . . . .	84
Succession duty. <i>See</i> Taxation, Death Duties.	
Sugar trade (Barbados) . . . . .	228
Survey: geological (Barbados) . . . . .	228
————— marks (Southern Nigeria) . . . . .	191
————— powers for (Alberta) . . . . .	202
Surveyors, qualification of (Nyasaland) . . . . .	196

	PAGE
TASMANIA, Legislation of . . . . .	132-137
Taxation : banking, insurance, telegraph companies, of (Nova Scotia) .	210
——— customs (Barbados) . . . . .	230
——— (Falkland Islands) . . . . .	197
——— (Mauritius) . . . . .	91
——— (Newfoundland) . . . . .	223
——— (St. Lucia) . . . . .	238
——— death duties : succession duty (Nova Scotia) . . . . .	213
——— debentures, of (Prince Edward Island) . . . . .	217
——— excise (British India) . . . . .	73-74
——— fruit trees, of (Tasmania) . . . . .	136
——— house tax (St. Vincent) . . . . .	239
——— hut tax (Nyasaland) . . . . .	197
——— income tax (Ashanti) . . . . .	187
——— (Dominion of New Zealand) . . . . .	159-160
——— (New South Wales) . . . . .	106
——— (Queensland) . . . . .	114
——— (Tasmania) . . . . .	137
——— land tax (Commonwealth of Australia) . . . . .	97
——— (Dominion of New Zealand) . . . . .	159-160
——— (Tasmania) . . . . .	137
——— loan, land, and trust companies of (Manitoba) . . . . .	207
——— (Nova Scotia) . . . . .	210
——— stamps (Nyasaland) . . . . .	197
Tea gardens, inspection of (Eastern Bengal and Assam) . . . . .	74
Teachers' pension fund (Newfoundland) . . . . .	222
——— (Trinidad and Tobago) . . . . .	236
——— superannuation of (Dominion of New Zealand) . . . . .	167
——— training college for (New South Wales) . . . . .	105
Telegraph and telephones : amendment of law (Papua) . . . . .	153
——— Department of (Alberta) . . . . .	202
——— (Bahamas) . . . . .	225
——— radio-telegraph (Bahamas) . . . . .	225
——— telephone lines, power to construct (Dominion of New Zealand) . . . . .	167
——— wireless telegraphy, licence for (Straits Settlements) .	87
——— regulations as to (U.S.A.) . . . . .	62-63
——— (Falkland Islands) . . . . .	198
——— (Mauritius) . . . . .	93
——— (Southern Nigeria) . . . . .	192
——— (Western Pacific) . . . . .	169
——— (St. Lucia) . . . . .	239
——— (St. Vincent) . . . . .	240
Theatres. See Public Entertainments.	
" Tipping " of employees prohibited (U.S.A.) . . . . .	65
Totalisator, licence for, at clubs (Western Australia) . . . . .	152
Town planning. See Building.	
Townships, government of (Nyasaland) . . . . .	196

	PAGE
Trade coupons (Queensland) . . . . .	112
Trade marks : amendment (Commonwealth of Australia) . . . . .	100
——— registration (East Africa) . . . . .	194
——— ——— (Uganda) . . . . .	194
Trade spirits, importation (Sierra Leone) . . . . .	188
Trading, licence for (Uganda) . . . . .	195
Traffic : control of (Territory for the Seat of Government, Australia) . . . . .	158
——— licencing of vehicles (Hong Kong) . . . . .	82
——— ——— (Federated Malay States) . . . . .	91
Training ships for boys (Victoria) . . . . .	145
Transvaal, Legislation of . . . . .	182-183
Trees, shade, planting of (Nova Scotia) . . . . .	212
Trinidad and Tobago, Legislation of . . . . .	233-237
Trustee, Public. <i>See</i> Public Trustee.	
Trustees, powers and duties of (Papua) . . . . .	153
Tuberculosis, treatment of (Newfoundland). <i>See</i> Public Health	221-222
Turk's and Caicos Islands, Legislation of . . . . .	233
UGANDA, Legislation of . . . . .	194-195
United Kingdom, Legislation of . . . . .	66-69
United Provinces of India, Legislation of . . . . .	75
United States of America, Legislation of . . . . .	61-65
——— State Legislation . . . . .	63-65
——— Federal Legislation . . . . .	61-63
University, Sydney, of (New South Wales) . . . . .	110
Unlawful societies (Sierra Leone) . . . . .	188
Usury, fine for (Egypt) . . . . .	46
VACCINATION (East Africa) . . . . .	193
Vagrancy (Papua) . . . . .	156
Vehicles, licensing of (Hong Kong) . . . . .	82
——— (Uganda) . . . . .	195
Veterinary board (Western Australia) . . . . .	147
Victoria, Legislation of . . . . .	137-146
Villages : headmen, powers of (Burma) . . . . .	76
——— incorporation of (Manitoba) . . . . .	206
WEST INDIES, Legislation of . . . . .	224-243
Whale fishery (Falkland Islands) . . . . .	198
——— (St. Helena) . . . . .	199
Weights and measures, standardising (East Africa) . . . . .	193
——— ——— (Newfoundland) . . . . .	222
——— ——— (Queensland) . . . . .	112
Wei-hai-Wei, Legislation of . . . . .	94
West Africa, Legislation of . . . . .	185-192
Western Australia, Legislation of . . . . .	146-152
Western Pacific, Legislation of . . . . .	169
White phosphorus matches prohibited (Southern Rhodesia) . . . . .	183

	PAGE
White slave traffic, suppression of, international convention for (France)	51
— — — — — whipping (U.K.) . . . . .	66
Widows of intestates, provision for (Gibraltar) . . . . .	243
Widows' pensions (Dominion of New Zealand) . . . . .	162
Wild birds, protection of (Antigua) . . . . .	241
— — — — — (Turk's and Caicos Islands). <i>And see</i> Birds . . . . .	233
— — — — — (British India) . . . . .	71-72
Wild dogs, premium on scalps of (South Australia) . . . . .	129
Will, restriction on freedom of disposition (Tasmania) . . . . .	132
Windward Islands, Legislation of . . . . .	237-240
Wireless telegraphy. <i>See</i> Telegraph and Telephone.	
Witchcraft, prevention of (Uganda) . . . . .	194
Women and girls: abusing, time limit for prosecution (Tasmania) . . . . .	134
— — — — — Chinese, Japanese or Oriental restaurant, not to be employed in (Saskatchewan) . . . . .	220
— — — — — labour hours limited to ten a day (U.S.A.) . . . . .	64-65
— — — — — industrial homes for girl offenders (British Columbia) . . . . .	204
— — — — — land, inheritance of (Russia) . . . . .	60
— — — — — night work for (Northern Nigeria) . . . . .	190
— — — — — — — — — (Trinidad and Tobago) . . . . .	234
— — — — — white slave traffic, international convention (France). . . . .	51
— — — — — — — — — whipping for offenders (U.K.) . . . . .	66
Woods and forests: Department of (British Columbia) . . . . .	203
— — — — — management of (Burma) . . . . .	76
— — — — — reserves and sale of timber regulated (Sierra Leone)	187-188
— — — — — "timber," definition of (East Africa) . . . . .	193
Workmen. <i>See</i> Labour.	

## REVIEWS.

### THE GREAT JURISTS OF THE WORLD.<sup>1</sup>

It was well that this series of learned and careful monographs should have been collected in one volume. Twenty-six names appear in the list: a brilliant roll, from Gaius to Ihering. The names of the contributors are almost as varied. Sir John Macdonell is responsible for Leibnitz and Ihering; Sir Courtenay Ilbert for Montesquieu; Prof. E. C. Clark for Papinian; whilst Dr. Phillipson deals with a group of international lawyers and Romanists. Particularly fresh and readable are Mr. Ledlie's articles on Gaius and Ulpian—the former opens quite in the style of Ruskin—and Mr. de Montmorency's on Hobbes, Pothier, Vattel, and Savigny. The late Sir William Rattigan deals with Grotius and Bartolus, and Mr. Registrar Manson is at home with Selden. Nineteen portraits are given, omitting Gentili (surely this could have been supplied from his statue at San Genesio?), Zouche (here again, a portrait by Jansen appears in *Classics of International Law*), Vico, Vattel and the antique jurists.

We could have exchanged Bacon for Coke or Blackstone, Colbert for Stair or Mansfield, Vico for D'Aguesseau, Argentré, or Loyseau, and Zouche for Marshall, but on the whole it is an admirable and fascinating book. We feel that we are making the personal acquaintance of these giants whom we have worshipped. The quiet provincial Gaius and the Imperial Ulpian, the busy Mittermeier and the contemplative Leibnitz, come together and rub shoulders in the most likeable fashion in our company. The golden thread of juristic thought runs without a break from one jewel of the law to another. Scott of Newcastle and Papinian of York know one another's language; Cujas and Colbert know it too.

Yet they have their distinguishing peculiarities, apart from those characteristic of their respective eras. The limpidity of Gaius; the controlling passion for principle which laid hold of Papinian; the lake-like breadth of Ulpian; the rough pioneer work of Bartolus; the broad culture of Alciat; the solid concise depth of Cujas; the homely practicality of Gentili; the magnanimity of Grotius; the versatile reserve of Zouche; the synthetic serenity of Leibnitz; the voluminous detail of Puffendorf; the ideal fire of Vico; the terse judgment of Bynkershoek; the free gaiety of Montesquieu;

<sup>1</sup> Edited by Sir John Macdonell, C.B., LL.D., F.B.A., and Edward Manson. (London: John Murray, 21s. net.)



the suavity of Pothier; the elegance of Vattel; the sensibility of Beccaria; the majesty of Stowell; the amiability of Mittermeier; the radiance of Savigny—"whose soul was a very pattern of clarity and charity"—no less than the humour of Ihering, are brought vividly before the reader. Perhaps Leibnitz and Papinian present the nearest approach to identity. Theosophists would tell us that fifteen hundred years is a fair period to allow for reincarnation.

Which of us remembers that Grotius was Ambassador to England *tempore* James I.? Or that he wrote on the Origin of the American Nations? Or that his remuneration for the *De Jure Belli ac Pacis* consisted of 200 free copies? Or that the *Leviathan* was written in Paris, by an author who came to grief in contests with Descartes on mathematics? Or that Hobbes anticipated Bramwell, in his professed inability to understand what was meant by "legal" reason? Or that he attacked the doctrine of constructive murder ("if a boy be robbing an apple-tree, and falleth thence upon a man and breaks his neck, Sir Edward Coke will have him hanged for it, as if he had fallen of pre-pense malice!") Or again that Leibnitz agreed with Arnold of Rugby—"Judicis munere delectabar; advocatorum aversabar!"

In Alciat's repudiation of the dead weight of glosses we may see an anticipation of Prof. Clark's deprecation of the stifling mass of English precedents. The Professor's essay on Papinian contains some valuable and curious speculations on the history of the *responsa prudentum* and the exact origin and nature of their legislative quality. Dr. Phillipson's on Alciat and Cujas comprises an account of the various schools of mediæval and renaissance Romanists. It might be wished, by the way, that Dr. Phillipson had avoided the use of the term "modernism" as descriptive of the post-renaissance spirit. Its connotations are too redolent of an ephemeral controversy.<sup>1</sup> And the expression "once and for all" is not English, and conveys a sense of finality—"once and for all time"—as well as of completeness, which the English idiom "once for all" does not. His essays on Gentili and Zouche in themselves form an admirable introduction to the study of the law of nations. Mr. de Montmorency's charity towards Bacon covers a good deal more of that self-conscious politician's misdeeds than is quite desirable. His paper on Pothier includes a unique account of the customary law of France as Pothier found it.

One article is by an American, Mr. Zane. We guessed his nationality, and felt that "marvellous" ought to be spelt with a single *l*, before we had read a page of his contribution. It is a severe but just summary of Bentham's defects. A striking observation, not inapposite to the present day, occurs in this chapter: "Like most reformers, he had *the worst possible view of the men with whom he came in contact*. . . . He failed to perceive that collectivism is bound to destroy individualism, because it substitutes, instead of the domination of a ruler or of a ruling class, the far more destructive domination of

<sup>1</sup> Cf. p. 468, s. v. *Pothier*.

a generally unfit majority." Mr. Zane has read his Calhoun to some purpose : he might, indeed, have substituted "clique" for the word "majority." If he were to come to the Chancery Bar, he might see cause to revise the opinion that there has been an abolition of the distinction between law and equity. And when Mr. Zane says that Bentham's *dictum* that bankers and banking are "always hurtful to every State" shows that he never understood "this most potent engine of modern industrialism," it is open to the sceptic to retort that this shows that Mr. Zane does not understand modern industrialism itself.

One of the most illuminating observations occurs in a footnote. Dr. Phillipson (p. 226, n. 1) there deprecates the tendency of modern writers, "indifferent to fundamental differences," to consider the evolution of a state as exactly conformable to the organic development of a human being. "La France? Qui est la dame?" as About once said. Of the same nature is Sir J. Macdonell's acute remark that the seventeenth-century confusion of theology and jurisprudence was as natural in that age as the inextricability of natural science and jurisprudence is in this. And Mr. de Montmorency's speculations (p. 486) on majority decisions are also of permanent value; so is his criticism of utilitarianism (p. 488): "while it necessarily depends on the appeal to experience, it invariably appeals to a very limited experience. If experience were exhaustive, the idealist and the utilitarian would be at one." It seems to us, however, that Mr. de Montmorency is guilty of an *a priori* (though doubtless a fashionable) assumption when he asserts that "natural horror" is no doubt evolved from some utilitarian basis. What is Mr. Bentwich's authority for stating, in his admirable essay on Stowell, that membership of the faculty of Advocates was narrowly limited? Was not every doctor entitled to practise as an Advocate? *Dr. Highmore's case* (8 East 213) shows that admission was discretionary. But it also shows that it was only refused in an uncommon event.

It is pleasing to see Austin's sneer at "the good Ulpian" transfixed with winged words as Mr. Ledlie transfixes it; that is one of the things which one promised oneself should some day be done. "1522" on p. 152 is one of the few misprints we have noticed; possibly the printer was tired of setting up 1622. "The great Post Royalists" (p. 449) is another; we thought at first that we had to do with a new variety of Cubism. And should not "neither . . . or," in Sir C. Ilbert's lively essay, be retracted?<sup>1</sup>

An unskilled word may be added on Sir J. Macdonell's criticism of Ihering's doctrine of *Der Zweck im Recht*. That doctrine opposes to Hegel's omnipotence of the general will, as a source of law, something else which is independent of that will. Whether, with Ulpian, we call it *utilitas*, or with Ihering "interests," the fact remains that there is something outside and beyond the *Gesamtwill* which determines its direction—namely, the nature of

<sup>1</sup> There is another obvious misprint in the footnote on p. 481, nor can "shows" be the right word at line 10 of p. 510; "pa" should be "par" on p. 564.

things. That Ihering attached undue importance to the conscious independence of the individual will is an accident, not the essence of his position, which remains true, and will have to be reckoned with by the Hegelian State-worshippers. It is not really to exalt the *Gesamtwille* to treat it as a *chimæra bombinans in vacuo*!

Sir J. Macdonell also supplies a short but pithy and suggestive introduction. "The latest form of social order is not," he tells us, "necessarily the final or the best." The jurist of to-day, applying to our own problems the qualities by which his predecessors shone, must deal in their comprehensive and candid spirit with the changing conceptions of the time. And if, in accomplishing this work, law requires to be related anew to theology and ethic, and to have its empire asserted over those factories of decrees called "legislatures," it may be that Sir J. Macdonell would not wholly deplore that result.<sup>1</sup> We may hope that the coming jurist will, like "*noster*" Gaius, "treat law with the hand and mind of an artist." Art is above ethic, philosophy, and theology, and the spiritual artist alone can enthrone jurisprudence in its proper place.

T. B.

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## THE MAKING OF THE AUSTRALIAN COMMONWEALTH.<sup>2</sup>

THE growth of the Australian Commonwealth has already been more than once elaborately sketched: the full facts regarding the movement are public property, and the fact that the Constitution was a document elaborated at several conferences, the discussions of which were made public, renders it at first sight a difficult task to produce a new book regarding federation which can add substantially to the information already available. Mr. Bernhard Wise, who has served with distinction in the Government of New South Wales and who himself played no small part in the events which led up to federation, has succeeded in producing a contribution of substantial value by concentrating his work on the special side of the movement with which he had first-hand acquaintance—the events in New South Wales. The development of the position in Victoria and Tasmania is relegated to appendices, and it would probably have been better from the artistic standpoint had they been omitted altogether. As they stand they are not in harmony with the plan of the work, and are rather in the nature of an afterthought.

The interest of Mr. Wise's work centres in the description of the political manœuvres which marked the years from 1889 to 1900, and in essence the narrative is a skilful rehabilitation of the part played by Sir Henry Parkes, and in a minor degree of the conduct of Sir Edmund Barton, and a searching

<sup>1</sup> See his essay on Leibnitz, p. 294.

<sup>2</sup> *The Making of the Australian Commonwealth, 1889 to 1900.* By Bernhard Ringrose Wise. (Longmans, Green & Co., London, 1913.)

criticism of the attitude of Sir George Reid towards federation. The attack on the policy of Sir George Reid is conducted with marked ability and with much candour, every effort being made to weigh the circumstances which may have actuated that statesman in his course of action, but it is difficult not to feel that the author is in some degree biassed when we find that he is prepared to look with a lenient judgment on the action of Sir Edmund Barton, after declaring for federation and opposing any tariff change, in accepting office in the Ministry of Sir George Dibbs, which was pledged to a change in the tariff and to postponement for a year of the federation resolutions originally brought forward by Sir Henry Parkes. That there were good political reasons for the action of Sir E. Barton is quite undeniable, but impartiality would seem to require that the same degree of leniency should be shown to the certainly very remarkable examples of inconsistency shown by Sir George Reid.

Apart, however, from questions of politics which are of ephemeral interest, it is difficult to deny that Sir George Reid saw clearly enough the real difficulties which the form of constitution would create for New South Wales, and the Commonwealth as a whole. In his famous "Yes-No" speech of March 28, 1898, Sir George Reid attacked the provisions of the draft Federation Bill as to the relations between the two Houses of the Parliament, the financial clauses, the navigation clauses, and the omission of any provisions to fix the site of the capital of the Commonwealth. The matters he dealt with were all grave questions, and he would have been deficient in candour to his followers and to the people of the Colony had he failed to lay stress upon them. In point of fact his efforts succeeded in 1899 in securing substantial changes in the provisions to which he took exception. The three-fourths majority required under the original proposals in the case of a joint session of the two Houses over a disputed measure was reduced to an absolute majority, a provision clearly required if hopeless deadlocks were not to arise : the people of Australia were empowered to amend the constitution if either House of Parliament would pass a measure at two successive sessions : Parliament was empowered to alter after a period of ten years the financial arrangement known as the "Braddon blot," and to grant financial assistance to a State : the capital was fixed at some place in New South Wales, not within a hundred miles of Sydney, and any change in the boundaries of a State was made subject to the assent of the majority of the electors in that State. It would be impossible to deny that all these amendments were of value. The financial proposals of the Federation Bill were based on the wholly erroneous supposition that the expenditure of the federation would be quite small : Sir G. Reid himself, as late as 1898, estimated it as £1,500,000, and the procedure by which the Commonwealth had to raise four times as much customs revenue as it desired and to return three-quarters to the States was so early found impracticable that general satisfaction greeted the substitution by Parliament on the expiration of the ten-year period of a

simple payment of 25s. a head of population to each State. The provisions regarding the federal capital rendered a decision possible by restricting the choice to one State, and the new capital at Canberra is slowly in process of creation. The failure to secure greater definiteness in the navigation clauses of the Bill was surely a matter of regret, since the obscurity of the legal position has clearly hampered the efforts of the governments of New South Wales, Victoria, and South Australia to agree in a scheme for the use of irrigation of the waters of the Murray, nor are complicated questions of this type best left to be decided at some problematical date at great expense by a judicial body. The composition of the Senate was another of the questions raised by Sir George Reid, and his argument that, as the taxation was national and not equally divided among the States, it was not logical that the Senate, which contained equal representation of each State, should have equal powers with the lower House as to money bills, seems irresistible in point of theory, while from another point of view the Senate has, in fact, almost wholly failed to fulfil its theoretical object of being, as contrasted with the lower House, a House representing specifically the interests of the different States.

There are many other points of interest in Mr. Wise's book, but only a few need be specially noted. At the present day it is interesting to remember that men like Sir George Dibbs saw in federation a prelude to the severance of the Commonwealth from the British Empire, on the ground that the continuance of union was incompatible with the nationalism of Australia, and in view of the recent Commonwealth referenda it is important to note that Mr. Macrossan, a delegate from Queensland at the Conference of 1891, declared that federation involved the Commonwealth taking over the debts of the States and at the same time taking over the railway systems of the States, and probably also all the waste land of the Commonwealth. The Constitution as passed gave the Commonwealth power to take over the debts, but left the State railways under the control of the States, and the questions affecting the proposed consolidation of the debts in their relation to the future borrowing of the States are so complicated that even in 1913 no basis of agreement for the carrying out of this purpose had been arrived at. Justice is also done by Mr. Wise to the influence of Mr. Inglis Clark in shaping the Constitution into its present form with its marked adherence to the United States model, an adherence which has brought with it advantages as well as disadvantages. It is interesting, in view of the strong hold of the system of ministerial responsibility in Australia, to note that both Mr. Clark and Sir Samuel Griffith in 1891 regarded it as not essential that the system should be provided for by law, though they were willing that it should be possible under the terms of the Constitution as then drafted.

Mr. Wise does not disguise his own views as a supporter of the strengthening of the power of the central Government against the States, but in this and all other matters he is judicious and guarded in his judgments. Perhaps

he may be held to be a little unfair to two ex-Governors, Sir Robert Duff and the Earl of Hopetoun. The former he regards as having erred in sending for Sir George Reid in 1894 on Sir George Dibbs's resignation of office, while to the latter's error in asking Sir William Lyne to form the first Commonwealth Ministry he attributes the bitterness of party feeling in the first years of the existence of the Commonwealth Parliament. But in both cases the Governors could urge constitutional practice in support of their action: in the first, Sir G. Reid was the recognised leader of the opposition in view of Sir Henry Parkes's retirement, and admittedly only three members of the party declined to recognise Sir G. Reid when he received the Governor's commission to construct a ministry. \*In the second, if Lord Hopetoun was aware, as Mr. Wise states, of the compact between Sir W. Lyne and Sir E. Barton that the former should not compete with the latter for the leadership of the Federal Government, then he had all the more reason to take the step of asking the leader of the Government of New South Wales, the premier State, to head the first Federation Ministry, since the existence of the compact should have prevented Sir W. Lyne from standing for the office, leaving the choice of the Governor-General to fall with propriety on Sir E. Barton.

One further point should be mentioned: in view of the modern theories of criticism of history, it is important to note that when, in December 1897, a question arose as to the circumstances in which Sir G. Reid was elected on November 19, 1891, to the leadership of the opposition in New South Wales, no two persons out of some forty present on the occasion agreed in the account of what took place.

A. B. K.

## NOTES.

**The Literature of Criminal Law.**—We have to acknowledge the receipt of a large quantity of literature—books, pamphlets, reports, and speeches—relating to criminal law. If abundance of discussion is any measure of the interest taken in a subject, no part of law commands more attention at present than that which relates to the treatment of criminals. And only a small proportion of the contributors to the multifarious discussions are lawyers: doctors, statisticians, sociologists, psychologists, and philanthropists seem to claim a right to speak with at least equal authority upon this subject. The sneer of Goldwin Smith—to expect the lawyer to reform legal procedure, is much like expecting the tiger to abolish the jungle—is wholly unfounded; but it is true that many of the most active reformers of criminal law are laymen.

**Military Requisitions and Foreigners.**—In the third number of the new publication (the appearance of which we welcome), *Questions Pratiques de Droit International Privé*, edited by M. Lafont and M. Lagardelle, are the reports of some interesting decisions, notably one by the Cour de Cassation in *Ministère public contre John Morris*, which touches both public and private law. Morris was prosecuted under the law of July 1909 relative to military requisitions for omitting to declare an automobile car of which he was owner. This law was declared by a decree of June 1910, to extend to all owners whatever be their nationality. The Court of Appeal of Chambéry thought that the Convention of February 1882 between Great Britain and France exempted English subjects from military requisitions; this was reversed by the Cour de Cassation. It was not for the Courts to fix the scope and meaning of a treaty *au point de vue du droit international public*; that was for the Government to settle; and the French Government had declared that the law extended to owners of automobiles irrespective of nationality.

**Transport Law.**—Dr. Poetsch, Regierungs-Assessor, writing in *Recht und Wirtschaft*, draws attention to the recent enormous expansion of the law relating to transport and locomotion. As he remarks, “Unsere heutige Kultur, unser ganzes wirtschaftliches Leben, Handel und Industrie beruhen und sind abhängig von den Beförderungs- und Verkehrsmitteln, von Eisenbahn und Schiff, Post und Telegraph.” To these have lately been added the automobile, the airship, the aeroplane, and wireless telegraphy. From these facts Dr. Poetsch deduces the necessity of the creation of an international Verkehrsrecht, and of practical instruction therein to be given at the

Universities. If he finds even in German Universities want of opportunities for such instruction, what would he say as to this country's deficiencies?

**Domestic Relationship Court.**—In the sixth report, just published, of the Municipal Court of Chicago is an interesting account of the work of that Court, established in 1911 because it was found that "in order to secure the best results it was necessary that certain classes of cases dealing especially with home relationship should be brought into one Court, where records could be much better preserved and the cases heard and disposed of more promptly and with less publicity." They include abandonment of wife and child, failure of parents to support children, proceedings in bastardy, violations of labour laws affecting children and of the ten hours' law as to work and selling liquor to minors. "The work of the Court," it is said, "is constantly increasing, due to a wider knowledge in the community of the Court's effectiveness in obtaining relief for abandoned and helpless families." It is worthy of note that three lady assistants are employed by the Court to collect information. The report speaks hopefully of the experiment of releases on probation. With reference to offenders released during ten months, the report remarks: "If these men and women had been in gaol, it would have been an enormous expense to the community for their keep—approximately \$80,676."

**Insurance Law in Australasia.**—A volume recently published on the Insurance Law of Australasia by Mr. J. E. Hogg has an interest for students of comparative legislation apart from the subject-matter. It has been written in the form of an Australasian supplement to English text-books. Thus the legislation of the six States and three territories of the Commonwealth of Australia, of New Zealand and of Fiji is brought together in one volume, having for its basis, though not containing, the insurance law of England. The book, therefore, forms a contribution towards uniformity of legislation and the simplification of relations among the members of one large section of the business community. The legislature of the Commonwealth of Australia has not yet exercised its right to make a uniform law throughout the Commonwealth on this subject, though it has passed Acts respecting marine insurance; so that there are still nine legislative bodies making insurance laws within its area. A Royal Commission has issued two elaborate reports upon life and fire insurance as a preliminary to uniform legislation, when opportunity permits, and has suggested some closer approach to English legislation. Mr. Hogg notes three points of interest. Life insurance is much more general in Australasia than in England, and legislation has been directed towards its encouragement. Statutory provision is made for the issue of duplicate policies where the original has been lost. There is no such legislation in the United Kingdom. In connection with fire insurance a feature peculiar to Australasia is the system of constituting elected Fire Brigade Boards, though the statutes from which they derive their authority are modelled upon the Metropolitan Fire Brigade Act, 1865. In marine



insurance the principal difference between England and Australasia is that there are very few underwriters who carry on a marine insurance business as individuals. It is mainly in the hands of insurance corporations. Under each branch of the subject Mr. Hogg refers to the statutes in the Australian States, New Zealand, and Fiji, and any cases bearing upon them, with the result that he has written a book not only of use to the practising lawyer and insurance offices in Australasia, but also suggestive to their confrères at home.

**Industrial Arbitration.**—With the aid of the admirable summaries of Australian legislation contributed by several correspondents to the annual Review of Legislation published in the Journal, readers may keep in touch with the changes in the law dealing with the conflicts between employers and workmen. But a synopsis of a statute frequently leads to a desire for information about its working; so that attention may be directed to a little book which Mr. W. F. Hamilton, K.C., has written upon *Compulsory Arbitration in Industrial Disputes*, dealing with the laws of Australia and New Zealand, and so complementary to Sir George Askwith's report upon the Canadian law.

**Scottish and South African Law.**—In the *South African Law Journal* of August 1913 occurs the following interesting paragraph with reference to Scottish and South African law:

"Besides his (*i.e.* Lord de Villiers, Chief Justice of South Africa) work on the Judicial Committee of the Privy Council in appeals from New Zealand and Australia, Lord de Villiers, C.J., has been sitting in the House of Lords on Scottish appeals. This is the first time that a Colonial Judge has had the honour of sitting on the Bench of the highest British tribunal hearing appeals from the United Kingdom. The newspapers, which have commented favourably on this new departure, recall the fact that the Scottish and the Roman-Dutch systems of law are in many respects similar, being both based largely on Roman law. It is not long since it was the fashion for Scottish law students to go to Leyden for a course of Roman-Dutch jurisprudence, as every reader of Stevenson's *Catriona* will remember. Voet is cited to-day in the Scottish Courts, and though the law of Scotland is now not quoted in our Courts as often as it used to be, its use is by no means rare, and the readers of the Reports will frequently come across references to the *Institutes* of Erskine and the *Commentaries* of Bell, while those of Coke and Blackstone are rarely, if ever, mentioned. The late Mr. Justice Menzies, our first law reporter, was specially sent out from Scotland to inaugurate the criminal procedure. It has also been said that the language of the Scots and of the Dutch is very similar, and that they are both in reality Anglo-Saxon. The law of South Africa is, like its people, made up mainly of Dutch, Scottish, and English elements, and there is no reason why a code should not be made of the best parts of each, with the present law as the foundation."

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०.	राज्ञि- राजनि	राज्ञोः	राजसु	नाज्ञि- नामनि	नाज्ञोः	नामसु
१.	राजन्	राजनौ	राजानः	नाम-नामन्	नाज्ञी-नामनी	नामानि
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Inst.	सीम्ना	सीमभ्याम्	सीमभिः	ब्रह्मणा	ब्रह्मभ्याम्	ब्रह्मभिः
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	मूर्धन् M.					
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Vo.	शशिन्	शशिनौ	शशिनः	भावि-भाविन्	भाविनी	भावि

On examining the above forms you will find that the terminations are divided into three classes as under :—

(a) In the 1st class come the first five terminations of the *Mas.* and the *Fem.* and the *Plu.* termination of the *Neu. Nom.* and *Acc.* cases. These terminations are called **सर्वनामस्थानः**.